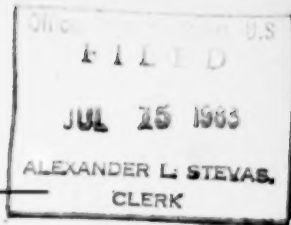


83-91



NO. _____

**IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1982**

**APTOS SEASCAPE CORPORATION,
a California corporation,**

Appellant,

vs.

THE COUNTY OF SANTA CRUZ, et al.,

Appellee.

APPENDICES TO JURISDICTIONAL STATEMENT

**ADAMS, LEVIN, KEHOE,
BOSSO, SACHS & BATES
A Professional Corporation**

By: Dennis J. Kehoe, Esq.

**323 Church Street
Santa Cruz, California 95060
(408) 426-8484**

***Attorneys for Appellant,
Aptos Seascape Corporation***

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APPENDIX A

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

APTOS SEASCAPE CORPORATION, a
California corporation,

Plaintiff,

vs.

THE COUNTY OF SANTA CRUZ,
BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CRUZ, et al.,

Defendants.

THE COUNTY OF SANTA CRUZ, a
body corporate and politic, on behalf
of itself, its citizens and the
People of the State of California,

Cross-Complainant,

vs.

APTOS SEASCAPE CORPORATION, a
California corporation, et al.,

Cross-Defendants.

JUDGMENT
No. 50142

FILED

JAN 18 1979

By /s/ RICHARD C. NEAL, Clerk
Deputy Santa Cruz County

This cause having come on regularly for trial before the HONORABLE ROLAND K. HALL, Presiding Judge, a jury having been waived, commencing on May 8, 1978, and concluding on July 14, 1978; plaintiff APTOS SEASCAPE CORPORATION being represented by counsel, Adams, Levin, Kehoe, Bosso, Sachs & Bates by DENNIS J. KEHOE and PHILIP R. BATES and Garrison, Townsend and Hall, by PETER L. TOWNSEND; defendants COUNTY OF SANTA CRUZ, BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, and PLANNING COMMISSION OF THE COUNTY OF SANTA CRUZ and cross-complainant COUNTY OF SANTA CRUZ on behalf of itself, its citizens and the people of the State of California, being represented by counsel, CLAIR A. CARLSON, County Counsel, JAMES M. RITCHEY, Assistant County Counsel, and JOHN BRISCOE, Special Assistant County Counsel; and

The STATE OF CALIFORNIA and the CALIFORNIA LANDS COMMISSION, as cross-defendants, having

been dismissed with prejudice by cross-complainant, COUNTY OF SANTA CRUZ; and

The Court having heard the testimony and considered the evidence, and, the Court having, at the request of defendant COUNTY, personally viewed the Subject Property and the surrounding lands and benchlands, in the presence of all counsel, the Court Reporter having been excused from being in attendance at said viewing pursuant to the stipulation of all parties; the matter having been argued and briefed and submitted; and the Court having rendered its Memorandum of Intended Decision; and Findings of Fact and Conclusions of Law having been requested by defendant COUNTY, and having been settled and made and filed herein; the Court having found that the activities of the defendants with respect to plaintiff's property constituted a taking of plaintiff's property, described in Exhibit "A" attached hereto and incorporated herein; it further appearing to the Court that the use for which said property was taken is a public use for which

the expenditure of public funds is authorized by law and the acquisition of the same is necessary for such use, and that plaintiff is entitled to damages for said taking; it appearing that the plaintiff is entitled to judgment as herein provided; and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Plaintiff APTOS SEASCAPE CORPORATION have judgment against the defendants, and each of them, for the taking by the defendants, and each of them, of the property described in Exhibit "A" attached hereto and incorporated herein by reference.

2. Plaintiff, APTOS SEASCAPE CORPORATION, have judgment against the defendants, and each of them, in the sum of THREE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$3,150,000.00) plus interest at the rate of seven percent (7%) per annum beginning December 5, 1972 until paid in full. Plaintiff, APTOS SEASCAPE CORPORATION, is awarded

against defendants, and each of them, costs of suit in the inverse condemnation proceedings; the fees in the inverse condemnation proceedings for the following experts: Gerald Tucker, H. Rich Bramwell, Byron Cunningham, Robert Williams, Tom Williams, Fred J. Werdmuller, and Jo Crosby & Associates; attorneys' fees incurred by APTOS SEASCAPE CORPORATION with the law firm of ADAMS, LEVIN, KEHOE, BOSSO, SACHS & BATES for the inverse condemnation proceedings. Costs of suit, expert fees, and attorneys' fees provided for herein shall be specified by APTOS SEASCAPE CORPORATION in a Memorandum of Costs and the defendants are entitled to a Court hearing if there is a dispute as to said amounts provided that the defendants file the appropriate Motion to Tax Costs. APTOS SEASCAPE CORPORATION is ordered to convey fee title to Subject Property to the COUNTY OF SANTA CRUZ upon receipt of full payment of this judgment.

3. The defendant's zoning enactments were valid exercises of the police power and beyond constitutional attack except in proceedings for damages in inverse condemnation. Judgment dismissing the Second Count in the First Amended Complaint for Damages for Inverse Condemnation and Declaratory Relief on file herein is hereby made.

4. As an alternate means of compensation to plaintiff, APTOS SEASCAPE CORPORATION, for the taking of the Subject Property, and in lieu of the payment of said THREE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$3,150,000.00) and interest thereon, the defendants, and each of them, at their option, may agree to the following and, if so, the same is hereby ordered, adjudged and decreed:

A. APTOS SEASCAPE CORPORATION, plaintiff herein, is hereby granted compensating higher densities of 40 residential units on its benchlands and 160 residential units on its uplands. These compensating higher densities are in addition to any other uses

and densities that the benchlands and uplands of the plaintiff may otherwise yield, which underlying uses and densities are herein referred to as "Base Densities". Said Base Densities shall be reasonable and shall not be reduced for the purpose of avoiding the effect of this Judgment. Defendants in determining the Base Densities of the benchlands and uplands of plaintiff shall not consider the fact that there are compensating higher densities vested in APTOS SEASCAPE CORPORATION for those lands so as to cause the defendant to reduce down the otherwise Base Densities. To do otherwise would constitute a violation of this Judgment in that the compensating higher densities to which APTOS SEASCAPE is entitled to over the Base Densities would be a sham and APTOS SEASCAPE would thereby be deprived of compensation to which it is entitled. APTOS SEASCAPE CORPORATION is hereby entitled to the above-mentioned compensating higher densities over and above the Base Densities.

B. Upon the issuance of building permits by defendants and substantial construction based thereon by APTOS SEASCAPE CORPORATION or its nominees for said 200 units of compensating higher densities over and above the Base Densities, APTOS SEASCAPE CORPORATION shall convey by deed an open space easement in perpetuity for the Subject Property described in Exhibit "A" to the COUNTY OF SANTA CRUZ. Since the remainder of the Subject Property may be more of a liability than an asset, at the time of such conveyance and at the option of APTOS SEASCAPE CORPORATION, APTOS SEASCAPE CORPORATION may transfer fee title to the COUNTY OF SANTA CRUZ and the COUNTY OF SANTA CRUZ shall accept the same.

C. If plaintiff has not received all of the compensating higher densities from COUNTY as called for in this Paragraph 4 within five (5) years from the date of the entry of this Judgment, plaintiff shall be entitled to the monetary compensation called for in

this Judgment together with interest thereon from December 5, 1972. In the event that plaintiff has received from COUNTY some but not all the compensating higher densities as called for herein within said five (5) year period, to the extent that plaintiff has not received said compensating higher densities, plaintiff shall be entitled to the monetary compensation of FIFTEEN THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$15,750.00) plus interest from December 5, 1972, for each unit of compensating higher densities not so received by plaintiff from COUNTY within said five (5) year period. Receipt of a unit of compensating higher densities means the issuance by defendants to APTOS SEASCAPE CORPORATION or its nominees of a building permit for the construction of a unit over and above the Base Densities.

This Court shall retain jurisdiction in this matter to insure that APTOS SEASCAPE CORPORATION receives the benefit of this compensation.

D. No matter which method of compensation is chosen by the defendants, APTOS SEASCAPE CORPORATION is awarded against defendants costs of suit, expert fees and attorneys' fees as provided for hereinabove.

E. This alternate is at the option of the defendants. In order to exercise this alternate, the defendants shall, within sixty (60) days of the date of the filing of the entry of judgment herein:

(1) File with the Court with a copy to the attorneys for the plaintiff written acceptance and agreement to provide the compensation pursuant to this Paragraph 4 of this Judgment. Said notice shall be accompanied by a certified copy of a resolution of the Board of Supervisors authorizing the acceptance of this option.

(2) Enact enabling ordinances providing for compensating higher densities to plaintiff as required by this Paragraph 4.

F. In the event that the defendants do not exercise this alternate pursuant to this Paragraph 4 or if this alternate is ruled illegal by a higher Court, this alternate shall be void and any exercise of the option by the defendants under this alternate shall be void and the method of compensation otherwise provided for in this Judgment shall remain in full force and effect.

5. Judgment on the Cross-Complaint and Amendments thereto is hereby entered in favor of APTOS SEASCAPE CORPORATION, cross-defendant, and against cross-complainant, COUNTY OF SANTA CRUZ, a body corporate and politic, on behalf of itself and citizens and people of the STATE OF CALIFORNIA. Furthermore, cross-defendant, APTOS SEASCAPE CORPORATION, is hereby awarded costs of suit with respect to the Cross-Complaint and Amendments thereto.

6. Defendant and cross-complainant, COUNTY OF SANTA CRUZ, on behalf of itself, its citizens and the

people of the STATE OF CALIFORNIA, shall take nothing by its Cross-Complaint.

7. The Clerk is hereby ordered to enter this Judgment.

Dated: January 17, 1979

/s/ ROLAND K. HALL
ROLAND K.HALL
JUDGE OF SUPERIOR COURT

EXHIBIT A

SITUATE IN THE COUNTY OF SANTA CRUZ,
STATE OF CALIFORNIA

BEING a part of the Aptos and San Andreas
Ranchos and more particularly bounded and described
as follows, to wit:

BEGINNING at the Southern corner of Lot 1 as
said lot is shown on map entitled "Seascape Beach
Estates Tract 483, Unit One" filed in Volume 48 of
Maps at Page 43, Santa Cruz County Records.

THENCE FROM SAID POINT OF BEGINNING
along the Southeastern boundary of said Tract 483
North $48^{\circ} 44' 50''$ East 245.00 feet to the Southern
corner of Lot 6 as said lot is shown on Map entitled
"Seascape Beach Estates Tract 511, Unit Four" filed in
Volume 50 of Maps at Page 283, Santa Cruz County
Records. Thence along the Southeastern boundary of

said Lot 6 North $61^{\circ} 16' 08''$ East 25.91 feet to the Western corner of Lot 7 in said Tract 511; thence along the Southwestern boundary of said Tract 511, South $41^{\circ} 15' 10''$ East 871.62 feet to the Southern corner of Lot 19 in said tract; thence along the Southeastern boundary of said Tract 511 North $48^{\circ} 44' 50''$ East 84.44 feet; thence leaving said last mentioned boundary South $54^{\circ} 15'$ East 50.35 feet; thence North $80^{\circ} 35'$ East 45.00 feet; thence South $29^{\circ} 00'$ East 26.00 feet; thence South $52^{\circ} 20'$ West 30.00 feet; thence South $29^{\circ} 20'$ East 32.00 feet; thence South $42^{\circ} 35'$ East 39.00 feet; thence South $48^{\circ} 30'$ East 102.00 feet; thence South $16^{\circ} 00'$ East 58.00 feet; thence South $29^{\circ} 00'$ East 70.00 feet thence North $82^{\circ} 00'$ East 15.00 feet; thence North $57^{\circ} 35'$ East 23.00 feet; thence North $37^{\circ} 20'$ East 100.00 feet; thence North $32^{\circ} 15'$ East 50.00 feet; thence North $78^{\circ} 25'$ East 80.00 feet; thence South $75^{\circ} 45'$ East 23.00 feet; thence North $65^{\circ} 00'$ East 41.00 feet; thence North $39^{\circ} 30'$ East 35.00 feet; thence North $33^{\circ} 40'$ East 153.00

feet; thence North $47^{\circ} 45'$ East 62.00 feet; thence South $72^{\circ} 15'$ East 39.00 feet; thence South $32^{\circ} 25'$ East 83.00 feet; thence South $50^{\circ} 40'$ East 52.00 feet; thence South $88^{\circ} 36'$ East 96.00 feet; thence North $77^{\circ} 45'$ East 79.00 feet to an angle in the Southwestern boundary of Southern Pacific Transportation Company as said boundary is shown on map entitled "Record of Survey of the Lands of Southern Pacific Transportation Co. through the lands of the Aptos Seascape Corp." filed in Volume 53 of Maps at Page 18, Santa Cruz County Records; thence along said last mentioned boundary South $25^{\circ} 51' 40''$ East 195.00 feet; thence South $53^{\circ} 31'$ East 168.10 feet; thence leaving said last mentioned boundary South $46^{\circ} 35'$ West 80.51 feet; thence South $50^{\circ} 00'$ West 80.00 feet; thence South $38^{\circ} 10'$ West 128.00 feet; thence South $52^{\circ} 40'$ West 118.00 feet; thence South $58^{\circ} 50'$ West 83.00 feet; thence South $32^{\circ} 55'$ West 26.00 feet; thence South $2^{\circ} 55'$ East 30.00 feet; thence South $26^{\circ} 25'$ West 27.00 feet; thence South $26^{\circ} 10'$ East 80.00 feet; thence South 33°

00' East 59.00 feet; thence South $60^{\circ} 40'$ East 50.00 feet thence South $75^{\circ} 25'$ East 92.00 feet; thence South $65^{\circ} 10'$ East 130.00 feet; thence North $81^{\circ} 00'$ East 70.00 feet; thence North $60^{\circ} 50'$ East 134.00 feet; thence North $54^{\circ} 30'$ East 100.00 feet; thence North $60^{\circ} 00'$ East 89.00 feet; thence North $58^{\circ} 40'$ East 85.00 feet to an angle in the Southwestern boundary of said lands of Southern Pacific Transportation Company; thence along said last mentioned boundary as shown on said map South $18^{\circ} 58' 30''$ East 110.00 feet; thence South $64^{\circ} 33'$ East 110.00 feet; thence South $40^{\circ} 44'$ East 170.00 feet; thence leaving said last mentioned boundary South $78^{\circ} 45'$ West 112.00 feet; thence North $89^{\circ} 30'$ West 109.00 feet; thence South $69^{\circ} 15'$ West 75.00 feet; thence South $78^{\circ} 20'$ West 70.00 feet; thence South $45^{\circ} 10'$ West 47.00 feet; thence South $16^{\circ} 30'$ West 57.46 feet; thence South $31^{\circ} 40'$ East 30.00 feet; thence South $50^{\circ} 40'$ East 46.00 feet; thence South $62^{\circ} 30'$ East 80.00 feet; thence South $56^{\circ} 15'$ East 215.00 feet; thence South $54^{\circ} 20'$

East 125.00 feet; thence South $80^{\circ} 30'$ East 60.00 feet;
thence North $78^{\circ} 00'$ East 177.00 feet; thence South
 $82^{\circ} 15'$ East 52.00 feet; thence South $36^{\circ} 15'$ East
52.00 feet; thence South $5^{\circ} 30'$ East 36.00 feet; thence
South $31^{\circ} 00'$ West 32.00 feet; thence South $75^{\circ} 30'$
West 80.00 feet; thence South $55^{\circ} 45'$ West 58.00 feet;
thence South $45^{\circ} 00'$ West 190.00 feet; thence North
 $88^{\circ} 50'$ West 30.00 feet; thence North $29^{\circ} 50'$ West
102.00 feet; thence North $41^{\circ} 15'$ West 80.00 feet;
thence North $56^{\circ} 30'$ West 63.00 feet; thence North
 $68^{\circ} 00'$ West 198.00 feet; thence North $73^{\circ} 45'$ West
155.00 feet; thence South $31^{\circ} 27'$ West 43.70 feet;
thence South $35^{\circ} 00'$ East 50.00 feet; thence South 46°
 $30'$ East 52.00 feet; thence South $38^{\circ} 30'$ East 109.00
feet; thence South $49^{\circ} 10'$ East 30.00 feet; thence
South $38^{\circ} 40'$ East 45.00 feet; thence South $21^{\circ} 00'$
East 35.00 feet; thence South $7^{\circ} 30'$ East 20.00 feet;
thence South $38^{\circ} 30'$ East 30.00 feet; thence South 55°
 $40'$ East 30.00 feet; thence South $50^{\circ} 00'$ East 88.00
feet; thence South $39^{\circ} 30'$ East 186.00 feet; thence

South $44^{\circ} 45'$ East 32.00 feet; thence South $28^{\circ} 00'$ East 35.00 feet; thence South $65^{\circ} 25'$ East 48.00 feet; thence South $25^{\circ} 30'$ East 25.00 feet; thence South $19^{\circ} 00'$ West 18.00 feet; thence South $41^{\circ} 15'$ East 100.00 feet; thence South $47^{\circ} 45'$ East 47.00 feet; thence South $36^{\circ} 00'$ East 80.00 feet; thence South $26^{\circ} 00'$ East 70.00 feet; thence South $15^{\circ} 40'$ East 30.00 feet; thence South $47^{\circ} 10'$ East 94.00 feet; thence South $33^{\circ} 30'$ East 60.00 feet; thence South $29^{\circ} 30'$ East 140.00 feet; thence South $73^{\circ} 30'$ East 6.00 feet; thence North $24^{\circ} 10'$ East 70.00 feet; thence North $46^{\circ} 50'$ East 140.00 feet; thence South $77^{\circ} 40'$ East 25.00 feet; thence South $14^{\circ} 00'$ East 58.00 feet; thence South $32^{\circ} 40'$ East 35.00 feet; thence South $35^{\circ} 10'$ West 28.00 feet; thence South $57^{\circ} 30'$ East 22.00 feet; thence South $22^{\circ} 15'$ East 30.00 feet; thence South $30^{\circ} 45'$ West 51.00 feet; thence South $81^{\circ} 15'$ West 40.00 feet; thence South $19^{\circ} 50'$ East 21.00 feet; thence East 25.00 feet; thence South $60^{\circ} 40'$ East 20.00 feet; thence South $19^{\circ} 00'$ East 28.00 feet; thence South 40°

45' East 45.00 feet; thence South $19^{\circ} 00'$ East 18.00 feet; thence South $37^{\circ} 10'$ West 25.00 feet; thence South $70^{\circ} 30'$ West 45.00 feet; thence South $2^{\circ} 30'$ East 17.00 feet; thence South $56^{\circ} 00'$ East 35.00 feet; thence North $44^{\circ} 00'$ East 50.00 feet; thence North $77^{\circ} 50'$ East 108.00 feet; thence South $41^{\circ} 50'$ East 42.00 feet; thence South $00^{\circ} 15'$ West 38.00 feet; thence South $27^{\circ} 35'$ West 30.00 feet; thence North $86^{\circ} 40'$ East 55.00 feet; thence South $4^{\circ} 00'$ East 40.00 feet; thence North $80^{\circ} 50'$ East 73.00 feet; thence North $55^{\circ} 10'$ East 70.00 feet; thence North $18^{\circ} 50'$ East 29.00 feet; thence North $62^{\circ} 40'$ East 135.00 feet; thence North $51^{\circ} 00'$ East 65.00 feet; thence North $74^{\circ} 45'$ East 65.00 feet; thence North $56^{\circ} 40'$ East 104.00 feet; thence North $88^{\circ} 00'$ East 34.00 feet; thence South $18^{\circ} 40'$ East 22.00 feet to the Southeastern boundary of lands described as Parcel Two in Deed from Loretta Veronica Leonard to Aptos Seascape Corporation dated March 28, 1968 and recorded April 1, 1968 in Book 1873 of Official Records at Page 613, Santa Cruz

County Records from which the Eastern corner of said lands bears North $55^{\circ} 17' 20''$ East 35.00 feet distant; thence along said Southeastern boundary South $55^{\circ} 17' 20''$ West 675.05 feet to a 1 1/2 inch Iron Pipe; thence continuing along said last mentioned boundary South $55^{\circ} 17' 20''$ West 410 feet a little more or less to the Bay of Monterey; thence Northwesterly along the Bay of Monterey 4770 feet a little more or less to a station from which the place of beginning bears North $48^{\circ} 44' 50''$ East; thence North $48^{\circ} 44' 50''$ East 165 feet a little more or less to the place of beginning.

COMPILED DECEMBER 1977 BY WILLIAMS &
ASSOCIATES, CONSULTING CIVIL ENGINEERS.

JUDGMENT ENTERED: Jan. 18, 1979

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

Case Number
5 0 1 4 2

APTOS SEASCAPE CORPORATION,

PLAINTIFF(S)

vs.

COUNTY OF SANTA CRUZ,

Defendants(s)

CERTIFICATE OF MAILING

I, Richard C. Neal, County Clerk and Clerk of the Superior Court of the State of California for the County of Santa Cruz, and not a party to the within action, hereby certify that on January 18, 1979, I served copies of the attached JUDGMENT by depositing the enclosed in sealed envelopes with the postage thereon fully prepaid, in the United States Post Office at Santa Cruz, California, addressed as follows:

Dennis Kehoe, Attorney at Law
323 Church Street
Santa Cruz, CA 95060

Peter Townsend
Garrison, Townsend & Hall
2610 Steuart Tower
One Market Plaza
San Francisco, CA 94105

County Counsel
County of Santa Cruz
Santa Cruz, CA 95060

Dated: 1-18-79

Richard C. Neal, County Clerk and Clerk of the
Superior Court, State of California County of Santa
Cruz

/s/ Janis R. Hageman
Deputy Clerk

APPENDIX B

SUPERIOR COURT OF THE
STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

APTOS SEASCAPE CORPORATION, a
California corporation,

Plaintiff,

vs.

THE COUNTY OF SANTA CRUZ,
BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CRUZ, et al.,

Defendants.

THE COUNTY OF SANTA CRUZ, a
body corporate and politic, on behalf
of itself, its citizens and the
People of the State of California,

Cross-Complainant,

vs.

APTOS SEASCAPE CORPORATION, A
California corporation, et al.,

Cross-Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW
No. 50142

FILED

JAN 18 1979

By RICHARD C. NEAL, Clerk
Deputy Santa Cruz County

This cause having come on regularly for trial

before the HONORABLE ROLAND K. HALL, Presiding Judge, a jury having been waived, commencing on May 8, 1978, and concluding on July 14, 1978; plaintiff APTOS SEASCAPE CORPORATION being represented by counsel, Adams, Levin, Kehoe, Bosso, Sachs & Bates by DENNIS J. KEHOE and PHILIP R. BATES and Garrison, Townsend and Hall, by PETER L. TOWNSEND; defendants COUNTY OF SANTA CRUZ, BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ, and PLANNING COMMISSION OF THE COUNTY OF SANTA CRUZ and cross-complainant COUNTY OF SANTA CRUZ on behalf of itself, its citizens and the people of the State of California, being represented by counsel, CLAIR A. CARLSON, County Counsel, JAMES M. RITCHEY, Assistant County Counsel, and JOHN BRISCOE, Special Assistant County Counsel; and

The STATE OF CALIFORNIA and the CALIFORNIA LANDS COMMISSION, as cross-defendants, having been dismissed with prejudice by cross-complainant,

COUNTY OF SANTA CRUZ; and

The Court having taken evidence and heard the testimony and considered same, and, the Court, after plaintiff and defendants had rested their cases on the first amended complaint, at the request of the cross-complainant COUNTY, personally viewed the property which was the subject of the cross-complaint for the purposes of said cross-complaint, in the presence of counsel, the Court Reporter having been excused from being in attendance at said viewing pursuant to the stipulation of the parties; the matter having been argued and briefed and submitted; and the Court having rendered its Memorandum of Intended Decisions; and good cause appearing therefor, the Court now renders the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Plaintiff owns approximately 110 acres bounded by the Southern Pacific Railroad tracks, Monterey Bay, Camp St. Francis and an existing residential area

which plaintiff developed and sold as Tracts 483 and 511. Approximately 40 acres of the property are above the 100 foot contour line and are herein referred to as the benchlands. The benchlands contain three parcels referred to herein as A, B and C. Approximately 70 acres of the property are below the 100 foot contour line. That 70 acres consists of a beach approximately one mile long, arroyos and palisades. The subject of this action is the 70 acre parcel and it is herein referred to as Subject Property. Subject Property is located in the County of Santa Cruz, State of California and is more fully described in Exhibit "A", attached hereto and incorporated herein.

2. Plaintiff purchased a total of approximately 500 acres. In addition to the 110 acres described above, plaintiff still owns approximately 200 acres of uplands, up the hill and away from the beach. The remaining property has been developed and sold.

3. Before plaintiff purchased the bulk of the property, it was zoned as unclassified. The property

was rezoned as a condition of the purchase. The 110 acre parcel was rezoned residential with a commercial hotel use allowed on Parcel B of the benchlands. The purchase was completed in 1963.

4. On September 26, 1967 the County adopted the Aptos General Plan. A chart marked Exhibit "B" and attached hereto contains the details of the Aptos General Plan as it applies to the 110 acre parcel. Subject Property was designated as beach and palisades, ravines and forest. No residential or other development was allowed on Subject Property.

5. The only reasonable use that can be made of Subject Property is for residential purposes. Subject Property has no agricultural value and is not appropriate for commercial or industrial development.

6. The 1967 Aptos General Plan provided that Subject Property should be left as open space. The problem of taking property by inverse condemnation was considered. The possibility of acquisition for the public was to be investigated. If that was not feasible,

the property owner was to be allowed compensating higher densities (i.e., additional residential units) on upland property. If the owner did not own any other upland property, development on the property designated for open space was to be permitted. The tool proposed to be used to provide compensating higher densities was a planned community district. All of the 110 acres were to be included in this planned community district, as well as other properties. On July 22, 1969 the Board of Supervisors ordered the formation of the planned community district within 90 days. To this day, the planned community district has never been formed and the County has no intention of forming such a district.

7. In 1970 the County began to prepare a Parks, Recreation and Open Space Plan (PROS). The first draft of the plan was completed in 1970. Subject Property was designated "acquisition only - immediate action - low priority." Hearings were held from time to time throughout the development of the PROS

plan. The final draft was completed in 1972 and the plan was adopted as an element of the General Plan in March, 1973. The designation of Subject Property remained the same throughout. It has never been changed.

8. During the early part of 1971 the plaintiff filed an application with the County for a tentative subdivision map for residential development on Subject Property. The subdivision was designated Tract 553, Unit 7. This application prompted the Board of Supervisors to adopt an interim emergency zoning ordinance for the purpose of preventing development of Subject Property until studies could be made of the area. On April 6, 1971, Ordinance 1595 was adopted to accomplish that purpose and the Board of Supervisors ordered the formation of a planned community district within 45 days. Ordinance 1595 was effective for ninety days.

9. On April 14, 1971 the Planning Commission held a hearing on Tract 553, Unit 7. The Planning

Commission found that the subdivision was inconsistent with the Aptos General Plan and denied the application. The Planning Commission considered the fact that the Board of Supervisors had ordered the formation of a planned community district that would include Subject Property. The planned community district would provide the tool to keep Subject Property in open space and provide plaintiff with compensating higher densities elsewhere. Plaintiff appealed the decision of the Planning Commission to the Board of Supervisors. On April 27, 1971 the Board of Supervisors denied the appeal.

10. On July 6, 1971 the Board of Supervisors extended the emergency interim zoning on Subject Property by Ordinance 1617 for an additional three hundred and sixty-five days.

11. On June 27, 1972 the Board of Supervisors extended the emergency interim zoning on Subject Property by Ordinance 1737 for an additional ninety days.

12. On September 19, 1972 the Board of Supervisors extended the emergency interim zoning of Subject Property by Ordinance 1773 for an additional one hundred and twenty days.

13. After the tentative subdivision map for Tract 553, Unit 7 was denied by the County, plaintiff had another development plan for Subject Property prepared. That plan is referred to herein as the Goetz Plan. The Goetz Plan with an environmental impact report was submitted to the County along with a request for rezoning of Subject Property. It was not a formal application for approval of a subdivision. The Goetz Plan provided for all of Subject Property to be left in an open space except for some reverse rise dwelling units about the 70 foot contour level below Parcel C of the benchlands. Planning Department staff felt the plan had merit and recommended that the 110 acres be rezoned as follows (see Exhibit "B"):

- | | |
|----------------------|-------------|
| 1. Subject Property: | UBS-50 |
| 2. Parcels A & C: | RM-3000 |
| 3. Parcel B: | C-2 (Hotel) |

14. The Planning Commission studied the Goetz Plan, held hearings, and concluded that there should be no development at all on the palisades, even above the 70 foot contour. The Planning Commission then recommended the same zoning for the 110 acres as had previously been recommended by staff (see Exhibit "B").

15. The Board of Supervisors held a public hearing and referred the rezoning request back to the Planning Commission to consider R-1-6-PD on the benchlands instead of RM-3000 and C-2 (Hotel). The Planning Commission sent the matter back to the Board of Supervisors without changing its original recommendation for RM-3000 and C-2 (Hotel) on the benchlands.

16. On May 9, 1972 the Board of Supervisors adopted County Ordinance 13.04.306 (now 13.04.426). That ordinance is marked Exhibit "C" and attached hereto. Ordinance 13.04.306 contains the development standards and sets the density allowed in Planned Unit Developments. Subparagraph b provides that the

density in Planned Unit Developments shall not exceed the maximum number of dwelling units allowed by the applicable zoning. The applicable zoning in this case is R-1-6-PD, which allows the construction of single family residences with a maximum density of one site per 6,000 square feet of developable land. There is a provision for a 10% increase on a site of ten acres or more. Subparagraph c provides that the development standards and density requirements for UBS districts shall not be determined by subsections a and b. In UBS districts the development standards and density requirement: must be consistent with the applicable general plan as determined by the Planning Commission, or Board, as the case may be (emphasis added).

17. On December 5, 1972 the Board of Supervisors again considered the rezoning request for the 110 acres. The Board of Supervisors adopted Ordinance 1800 rezoning the 110 acres as follows (see Exhibit "B"):

- | | |
|----------------------|----------|
| 1. Subject Property: | UBS-50 |
| 2. Parcels A & C: | R-1-6-PD |
| 3. Parcel B: | R-1-6-PD |

18. During the discussion prior to adopting Ordinance 1800, the Board of Supervisors inquired as to whether any credit could be given for the arroyos and the beach if plaintiffs submitted a Planned Unit Development for the benchlands. The question was directed to Walter Monasch, the Santa Cruz County Planning Director. Mr. Monasch informed the Board of Supervisors that no credit could be given for the arroyos and the beaches that were left in open space. The type (i.e. single family residences) and the density of development of the benchlands are strictly controlled by the R-1-6-PD designation and no density credits can be given on the benchlands in excess of that zoning designation. Shortly thereafter, the Board of Supervisors adopted Ordinance 1800.

19. The effect of Ordinance 1800 is as follows:

1. Subject Property: No development at all

is allowed on Subject Property under Ordinance 1800. The density under the UBS-50 zoning is controlled by the General Plan pursuant to County Ordinance 13.04.306. The density allowed by the Aptos General Plan is zero.

2. Benchlands (A, B, and C): Under the R-1-6-PD zoning, construction of single family residential units is allowed. The maximum density is one site per 6,000 square feet. No compensating higher densities can be granted by the County on the benchlands in return for leaving the 70 acres of Subject Property in open space.

20. On March 27, 1973 the Board of Supervisors adopted the PROS plan as an element of the General Plan. Subject Property was designated as "acquisition only - immediate acquisition - low priority".

21. On October 1, 1974 the Board of Supervisors adopted a new Aptos General Plan. Subject Property

is designated therein as "Open reserve; park-play-ground". No development of the Subject Property at all is allowed under the 1974 Aptos General Plan.

22. The County of Santa Cruz has precluded all use of Subject Property for residential purposes. Plaintiff has not been allowed any reasonable use of Subject Property. The County has made it impossible to grant compensating higher densities on the benchlands in return for allowing the 70 acres of beach, arroyos and palisades to remain as open space. The County has placed Subject Property into open space and has not, and does not intend to grant the plaintiff any compensating higher densities on the benchlands.

23. The County has not granted plaintiff any open space credits or any other type of credits for Subject Property and does not intend to do so in the future.

24. The effect of UBS-50 zoning, County Ordinance 13.04.306 (see Exhibit "C"), the 1967 Aptos General Plan, the 1974 Aptos General Plan and the 1973 Parks, Recreation and Open Space Plan is to put

the property into open space preserve and preclude all reasonable use of the property by the plaintiff.

25. The County has used subterfuge to acquire Subject Property as open space for the benefit of all the public without compensating plaintiff for its taking of Subject Property in any manner whatsoever.

26. Seascope, in constructing roads and sewers, has expended substantial sums of money in oversizing the sewers and roads so as to service Subject Property.

27. Seascope has been assessed taxes by the County and has paid taxes on Subject Property to the County since Seascope purchased Subject Property to the present date.

28. Subject Property has been treated by the County as a parcel of property separate from the benchlands. Subject Property is a de facto separate parcel of property.

29. A ban on sewer connections in the area in which Subject Property is located has been in effect since July, 1972. It will not be lifted until the Aptos

transmission line to the Santa Cruz sewer plant is completed sometime in 1979. Said sewer ban was temporary and did not prevent County from applying reasonable land use regulations to Subject Property or, in the alternative, granting plaintiff open space credits or residential density credits on other property owned by plaintiff. County placed Subject Property into de facto open space preserve because County wanted the property as open space for use by all members of the public, not because of the temporary sewer ban.

30. County has not previously allowed development on other property owned by plaintiff in excess of the pertinent zoning and Aptos General Plan.

31. Plaintiff has fully exhausted all available administrative remedies. Any additional attempt by plaintiff to petition County for relief would have been a futile gesture.

32. At all times herein mentioned, the County was and is a governmental entity and is possessed with the power of eminent domain and authorized to acquire

private property for public use, including but not limited to parks and open space, by negotiation, condemnation or the exercise of eminent domain.

33. Culminating in the adoption of Ordinance 1800 on December 5, 1972, all of the Subject Property was designated as open space and the County has taken Subject Property to preserve it as open space for the benefit of all the public.

34. The acquisition, maintenance and preservation, and each of them, of land for open space is a public use for which public funds may be expended by County.

35. County has taken Subject Property for the benefit of the public for open space and just compensation is due, owing and payable by County to Seascape.

36. The actions and inactions of the County culminating in Ordinance 1800 adopted December 5, 1972 were invoked by the County in order to evade the requirement that the Subject Property must be

acquired in eminent domain proceedings.

37. By its actions and inactions culminating in Ordinance 1800, the County has preserved the Subject Property for the benefit of the public for open space and park purposes thereby causing a taking of Subject Property for which just compensation is due, owing and payable by County to Seascope

38. There were no market sales within a reasonable time of the date of valuation located sufficiently near the Subject Property being valued that were of the same size or the approximate same size of Subject Property. Nevertheless, there were market sales within a reasonable time of the date of valuation of Subject Property located sufficiently near the Subject Property being valued that were smaller in size than Subject Property that reasonably do shed light upon the fair market value of Subject Property as of the date of valuation. Use of such sales to shed light upon the fair market value of Subject Property as of the date of valuation is a just, reasonable and equitable

method for the determination of the fair market value of Subject Property, as of the date of valuation.

39. No developer's or landowner's profit, present or future, is included in the fair market value of the Subject Property as set forth herein.

40. Subject Property is located within the coastal zone established by the California Coastal Zone Conservation Act of 1972 and, at least in substantial part, within the permit jurisdiction of that Act.

41. Having considered the expert testimony herein, the view of subject property; CEQA; the passage of the California Coastal Zone Conservation Act of 1972; the items and adjustments specified in the Appraisal Handbook published by the American Institute of Real Estate Appraisers, Defendant's Exhibit KK; and other factors relevant to value, it is found that immediately prior to the taking by County of Subject Property, and as of December 5, 1972, Subject Property had a fair market value of \$3,150,000. As a proximate result of the taking by

County, of the fee interest of Subject Property, Seascope has been damaged in the amount of \$3,150,000, plus interest at the rate of seven percent per annum from December 5, 1972, until paid in full, together with costs of suit; expert fees for Gerald Tucker, H. Rich Bramwell, Byron Cunningham, Robert Williams, the engineering firm of Bowman & Williams, and particularly Tom Williams and Fred J. Werdmuller, and Jo Crosby & Associates; and attorneys' fees for the law firm of Adams, Levin, Kehoe, Bosso, Sachs & Bates, all of which fees and costs have reasonably and actually been incurred by plaintiff. Said fees and costs are reasonable costs, disbursements and expenses, and each of them, of Seascope reasonably and actually incurred because of said inverse condemnation proceeding.

42. The parties hereto have stipulated that the amounts claimed by Seascope with respect to costs of suit, fees and attorneys' fees shall be submitted to the Court in the Memorandum of Costs. The County is

entitled to a Court hearing thereafter if it objects to the amounts in an appropriate Motion to Tax Costs.

43. If developed for residential purposes, Subject Property would reasonably accommodate 200 residential units.

CROSS-COMPLAINT FOR IMPLIED-IN-LAW

PUBLIC DEDICATION

44. The real property described in the Cross-Complaint is the same real property described in the Complaint. It consists of beach, arroyos and palisades. Said real property is referred to herein as Subject Property and the beach portion of Subject Property is referred to herein as Subject Beach.

45. Plaintiff is the owner of Subject Property. Subject Property is included within the boundaries of the Aptos and San Andreas Mexican Grants, as surveyed, confirmed, patented, and conveyed by the United States of America to Seascope's predecessor in the title pursuant to the Private Land Claims Act of 1851 (9 Stats. at L. 631).

46. The bayward boundary of the lands so patented by the United States of America and of the land described in the Cross-Complaint is the mean high tide line of Monterey Bay.

47. The patents of the United States of America to Seascope's predecessors did confirm and convey fee simple absolute title to the lands therein described, including Subject Property.

48. Subject Beach is approximately one mile long and is bounded by Monterey Bay in front and palisades and Tract 511 in back. Subject Beach is part of a continuous beach approximately 15 miles long, stretching from Capitola to the mouth of the Pajaro River. It is bounded by private beaches at both ends. On the northwest end or up the beach, it is bounded by Tract 483 and Hidden Beach. The beach in front of Tract 483 is now owned by the lot owners in that subdivision and is not part of this action. Rio del Mar Beach State Park and Seacliff Beach State Park are located farther up the beach from Subject Beach. On the southeast

end or down the beach, it is bounded by Camp St. Francis. La Selva Beach and Manresa Beach State Park are located farther down the beach from Subject Beach.

49. There are five access routes to Subject Beach. Busch's Gulch is located northwest of Subject Beach. The sewer plant is located in Busch's Gulch. It is separated from Subject Beach by Tracts 483 and 511. Busch's Gulch can be reached by taking Rio del Mar Boulevard to Townsend Drive or Cliff Drive. A footpath leads through Busch's Gulch to Hidden Beach. With the development of Seascape property, an additional access was created to Busch's Gulch. Clubhouse Drive to Sumner Avenue was completed in 1968. Sumner Avenue from Clubhouse Drive to Busch's Gulch was completed in 1973. Since 1973, Busch's Gulch can be reached by way of Clubhouse Drive and Sumner Avenue. Busch's Gulch is referred to herein as Access No. 1.

50. Via Palo Alto in Tract 511 was completed in 1970. Since then motor vehicles can take Clubhouse Drive to Via Palo Alto A stairway leads from Via Palo Alto to the beach. The stairway was also completed in 1970. The Via Palo Alto stairway is referred to herein as Access No. 2.

51. Seascape Boulevard, Dolphin Drive and Sumner Avenue between Seascape Boulevard and Clubhouse Drive were completed in 1965. Since 1965 motor vehicles can take Seascape Boulevard or Seascape Boulevard and Dolphin Drive to Sumner Avenue. A footpath leads from the Southern Pacific railroad trestle near the intersection of Dolphin Drive and Sumner Avenue through an arroyo to Subject Beach. Until February, 1976 this footpath was unimproved, steep and difficult. It is referred to herein as Access No. 3.

52. Another footpath begins at the intersection of Seascape Boulevard and Sumner Avenue. It leads across a field and down a palisade to Subject Beach.

This footpath was and is unimproved, steep and difficult. It is referred to herein as Access No. 4.

53. Sumner Avenue was extended from Seascape Boulevard to Via Lantana and Via Trinita in 1973. A footpath leads from that area through an arroyo to Subject Beach. Until September, 1975 this footpath was unimproved, steep and difficult. It is referred to herein as Access No. 5.

54. No public parking is provided for any of these access routes except on the streets.

55. Until the development of Seascape property, the only motor vehicle access was to Busch's Gulch (Access No. 1). The footpath through Busch's Gulch leads to the Hidden Beach area. People using that access tended to congregate in the Hidden Beach area. People seeking privacy could walk up the beach toward Rio del Mar or down the beach to the area in front of what is now Tract 483. Only a few people walked past what is now Tract 483 to Subject Beach. Those who did either wanted privacy and seclusion or

were following the clams or surf fish.

56. The paved portion of Clubhouse Drive ended on the landward side of the golf course and did not reach what is now known as Sumner Avenue. A dirt road did cross the golf course ending at a house located in Busch's Gulch. That road was not open to the public. A few people who lived in the area walked across the golf course and either climbed down through an arroyo to the beach or crossed the strawberry fields on top of the palisades and climbed down to Subject Beach. These routes were unimproved, steep and difficult. Those desiring an easier route would walk to Busch's Gulch (Access No. 1).

57. People could also walk up the beach from La Selva Beach and Manresa Beach State Park or down the beach from Rio del Mar. It is a long walk either way and few people made the trip.

58. Until the development of Seascape Property opened up better access to Subject Beach, public use of Subject Beach was casual rather than substantial.

59. The first access routes that were available due to the development of Seascape were Nos. 3 and 4. Seascape Boulevard, Dolphin Drive and Sumner Avenue from Clubhouse Drive to Dolphin Drive and Seascape Boulevard were completed in 1965. There was an increase in the amount of public use. Public use was still casual rather than substantial.

60. In 1968, Clubhouse Drive was completed to Sumner Avenue and Access Nos. 3 and 4. Public use gradually increased but in 1968 it was still casual rather than substantial.

61. The stairs constructed by Seascape from Via Palo Alto to Subject Beach (Access No. 2) were completed in 1970. Although parking on the street is a limiting factor, the stairway does provide easy access to the beach. Since the stairs were completed in 1970, public use of Subject Beach has increased substantially. People tend to congregate in that area.

62. Sumner Avenue was extended to Busch's Gulch (Access No. 1) and to Access No. 5 in 1973. Use of

Subject Beach has increased very substantially since 1973.

63. On October 25, 1962 Erik Krag, predecessor in title of the plaintiff, dedicated Access No. 1 to the public.

64. On May 22, 1969 plaintiff dedicated Access No. 2 to the public.

65. On October 15, 1976 plaintiff dedicated Access No. 3 to the public.

66. In September of 1975 plaintiff improved Access No. 5, including the construction of a stairway over the steeper parts.

67. In February of 1976 plaintiff improved Access No. 3, including the construction of a stairway over the steeper parts.

68. There are not now nor have there ever been any public improvements on or public maintenance of Subject Beach. The only improvements are those made to Access Nos. 3 and 5 mentioned above. They were made by plaintiff. There are a small number of trash

cans located on Subject Beach near the palisades. They are provided and maintained by plaintiff. No public entity has ever provided any trash cans or other items for Subject Beach. There are not now nor have there ever been any rest rooms, lifeguards or other such amenities.

69. In 1964, plaintiff began hiring off duty deputy sheriffs for security purposes. Beginning in 1969, plaintiff hired its own security patrol. Maintaining order on Subject Beach was one of the functions of security personnel since 1964.

70. Access Nos. 1, 2 and 3 have already been dedicated to the public and are not in issue.

71. The public was granted permission to use Subject Beach pursuant to Civil Code Section 813 on July 31, 1972. Public use of Subject Beach after that date does not create any public rights. Plaintiff contends that the permission granted July 31, 1972 to the public to use Subject Beach impliedly granted the public permission to use Access Nos. 4 and 5 to reach

the beach from Sumner Avenue. That contention is valid. Public use of Access Nos. 4 and 5 after July 31, 1972 does not create any public rights.

72. The public was formally granted permission to use Access Nos. 4 and 5 pursuant to Civil Code Section 813 on July 15, 1976.

73. Prior to the development of Seascape properties, Subject Beach was a remote, secluded, isolated beach with limited access. The main access was through Busch's Gulch (Access No. 1) which was dedicated to the public on October 25, 1962. People who used that access tended to congregate in the area of Hidden Beach. The few people who walked down the beach to Subject Beach were looking for the privacy, isolation and seclusion available on Subject Beach or were following the clams or fish.

74. Those people who used the area of Subject Beach for clamming or fishing generally, though not exclusively, used the beach below the mean high tide line. That area did not and does not belong to the

plaintiff. Use of that area by the public does not create any public rights over property above the mean high tide line.

75. Until the development of Seascape Property, public use of Subject Beach was casual rather than substantial. Subject Beach was a remote, secluded and isolated beach.

76. In 1965 streets were completed to the entrance of Access Nos. 3 and 4. These access routes were unimproved, steep and difficult. Access No. 3 was improved by plaintiff and a stairway added in February of 1976. It was dedicated to the public on October 15, 1976. Access No. 4 remains unimproved, steep and difficult to this day.

77. In 1968, an additional street access was completed to Access Nos. 3 and 4.

78. In 1970, Access No. 2 and the streets leading to it were completed by plaintiff. It had previously been dedicated to the public on May 22, 1969.

79. In 1973, streets were completed to Access No. 5. Access No. 5 was unimproved, steep and difficult. It was improved by the plaintiff and a stairway was added in September of 1975. An additional street access to Busch's Gulch (Access No. 1) was also completed in 1973.

80. The five-year period prior to July 31, 1972 began July 31, 1967. At that time the only access routes that could be approached by motor vehicle were Busch's Gulch (Access No. 1) and Access Nos. 3 and 4. Busch's Gulch could only be reached through the Rio del Mar flats and then by Townsend Drive or Cliff Drive. Access Nos. 3 and 4 could only be reached by taking San Andreas Road to Seascape Boulevard to Sumner Avenue with Dolphin Drive as an alternate route off of Seascape Boulevard. Neither Access No. 1 nor Access Nos. 3 and 4 contained any place for public parking except on the street. Access Nos. 3 and 4 remained unimproved, steep and difficult. A few people living in the area would walk to Subject Beach

from their homes. The use of Subject Beach at this time was casual rather than substantial. Subject Beach was still secluded, remote and isolated.

81. Public use of Subject Beach increased gradually from 1965 to the present. It is impossible to pick a precise date and state with any degree of accuracy that public use changed from casual to substantial on that particular day. Public use did change from casual to substantial sometime between the completion of Access No. 2 in 1970, and the completion of Sumner Avenue to Access No. 5 in 1973.

82. Public use of Subject Beach was not substantial for any five year period prior to July 31, 1972. Public use during the immediately preceding five year period was not sufficient to raise the conclusive and indisputable presumption of knowledge and acquiescence in public use which, at the same time, negated the idea of mere license. The use was casual rather than substantial. The scope and continuity of the use were not enough to clearly indicate to the owner that

the property was in danger of being dedicated.

83. COMMENT: County has requested a finding of fact that the water in Monterey Bay reaches the base of the palisades in severe winter storms. No such finding of fact is included because it could only be relevant to an attempt to establish an ordinary high-water mark. Since no evidence was introduced as to how often water from Monterey Bay reaches the base of the palisades, the evidence was insufficient to establish the ordinary high-water mark. Also, the "ordinary high-water mark" referred to in Civil Code Section 830 has the same definitive meaning as "mean high tide line". The "mean high tide line" is a phrase commonly used in surveying and the meaning of the phrase commonly used in surveying is the meaning adopted by this Court.

84. COMMENT: County has requested a finding of fact as to the number of people using Subject Beach at various times. The evidence introduced was insufficient to make such a finding. Subject Beach

terminates at the "mean high tide line" and people seaward of that line are not on Subject Beach. Hidden Beach and the beach in front of Tract 483 are not included in Subject Beach. No reliable testimony was introduced from which this Court could make an accurate approximation of the number of people using Subject Beach at a particular time.

85. Any Conclusion of Law more properly designated as a Finding of Fact is incorporated herein as a Finding of Fact.

CONCLUSIONS OF LAW

1. By the actions and inactions of the County, culminating in the adoption of Ordinance 1800 adopted December 5, 1972, Seascape has been deprived of all reasonable, practicable, beneficial and economic use, and each of them, of Subject Property by County for which just compensation is due, owing and payable by County to Seascape.

2. On December 5, 1972, the County caused and accomplished a de facto taking of the Subject Property

entitling Seascope to judgment in inverse condemnation for said taking.

3. Defendants, County of Santa Cruz, Board of Supervisors of the County of Santa Cruz, and the Planning Commission of the County of Santa Cruz, are existent pursuant to the laws of the State of California as a general law county.

4. The use for which the Subject Property was taken by the County is a public use for which the expenditure of public funds is authorized by law and the acquisition of the same is necessary for such use.

5. Seascope duly and timely submitted a claim with County which claim was denied and, thereafter, Seascope duly and timely commenced this inverse condemnation proceeding.

6. Seascope is entitled to judgment against the County of Santa Cruz for just compensation for said taking as measured by the fair market value of Subject Property as of December 5, 1972.

7. Seascope is entitled to judgment against defendants, and each of them, in the amount of \$3,150,000.00, together with interest thereon at the rate of seven percent per annum from December 5, 1972, until paid in full, together with costs of suit herein, attorneys' fees and expert fees in the inverse condemnation proceedings herein.

8. Seascope is entitled to costs of suit, attorneys' fees and expert fees for Gerald Tucker, H. Rich Bramwell, Byron Cunningham, Robert Williams, the engineering firm of Bowman & Williams and in particular Tom Williams and Fred J. Werdmuller, Jo Crosby & Associates, and judgment therefor.

9. This Court determined on August 18, 1978, upon motion of County, that Count II of the First Amended Complaint failed to state a cause of action. The zoning enactments of the County were a valid exercise of the police power to zone, and beyond constitutional attack except in proceedings for damages in inverse condemnation. County is therefore

entitled to judgment dismissing Count II of the First Amended Complaint.

10. The Cross-Complaint was filed within a reasonable time after the County discovered the possibility of a claim of implied dedication and the action is not barred by laches or estoppel.

11. Seascope was, on the date of said taking, the owner of the real property described in the Cross-Complaint in fee simple absolute. The seaward boundary is the "mean high tide line". No easement acquired under Mexican law affects the seaward boundary. That boundary is determined by Civil Code Section 830. The patent in question does not indicate a different intent.

12. There has been no dedication to the public of the land described in the Cross-Complaint, or any interest therein, at any time, except for those express written dedications and grants of easements and rights of way set forth in the Official Records of the County of Santa Cruz.

13. On the date of said taking there were no public easements or other public rights of use of the land described in the Cross-Complaint except for those express written dedications and grantes of easements and rights of way set forth in the Official Records of Santa Cruz County.

14. Any Finding of Fact more properly designated as a Conclusion of Law is incorporated herein as a Conclusion of Law.

Dated: January 17, 1979

/s/ ROLAND K. HALL

ROLAND K. HALL

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

SITUATE IN THE COUNTY OF SANTA CRUZ,
STATE OF CALIFORNIA

BEING a part of the Aptos and San Andreas
Ranchos and more particularly bounded and described
as follows, to wit:

BEGINNING at the Southern corner of Lot 1 as
said lot is shown on map entitled "Seascape Beach
Estates Tract 483, Unit One" filed in Volume 48 of
Maps at Page 43, Santa Cruz County Records.

THENCE FROM SAID POINT OF BEGINNING
along the Southeastern boundary of said Tract 483
North $48^{\circ} 44' 50''$ East 245.00 feet to the Southern
corner of Lot 6 as said lot is shown on Map entitled
"Seascape Beach Estates Tract 511, Unit Four" filed in
Volume 50 of Maps at Page 283, Santa Cruz County

Records. Thence along the Southeastern boundary of said Lot 6 North $61^{\circ} 16' 08''$ East 25.91 feet to the Western corner of Lot 7 in said Tract 511; thence along the Southwestern boundary of said Tract 511, South $41^{\circ} 15' 10''$ East 871.62 feet to the Southern corner of Lot 19 in said tract; thence along the Southeastern boundary of said Tract 511 North $48^{\circ} 44' 50''$ East 84.44 feet; thence leaving said last mentioned boundary South $54^{\circ} 15'$ East 50.35 feet; thence North $80^{\circ} 35'$ East 45.00 feet; thence South $29^{\circ} 00'$ East 26.00 feet; thence South $52^{\circ} 20'$ West 30.00 feet; thence South $29^{\circ} 20'$ East 32.00 feet; thence South $42^{\circ} 35'$ East 39.00 feet; thence South $48^{\circ} 30'$ East 102.00 feet; thence South $16^{\circ} 00'$ East 58.00 feet; thence South $29^{\circ} 00'$ East 70.00 feet thence North $82^{\circ} 00'$ East 15.00 feet; thence North $57^{\circ} 35'$ East 23.00 feet; thence North $37^{\circ} 20'$ East 100.00 feet; thence North $32^{\circ} 15'$ East 50.00 feet; thence North $78^{\circ} 25'$ East 80.00 feet; thence South $75^{\circ} 45'$ East 23.00 feet; thence North $65^{\circ} 00'$ East 41.00 feet; thence North 39°

30' East 35.00 feet; thence North $33^{\circ} 40'$ East 153.00 feet; thence North $47^{\circ} 45'$ East 62.00 feet; thence South $72^{\circ} 15'$ East 39.00 feet; thence South $32^{\circ} 25'$ East 83.00 feet; thence South $50^{\circ} 40'$ East 52.00 feet; thence South $88^{\circ} 36'$ East 96.00 feet; thence North $77^{\circ} 45'$ East 79.00 feet to an angle in the Southwestern boundary of Southern Pacific Transportation Company as said boundary is shown on map entitled "Record of Survey of the Lands of Southern Pacific Transportation Co. through the lands of the Aptos Seascap Corp." filed in Volume 53 of Maps at Page 18, Santa Cruz County Records; thence along said last mentioned boundary South $25^{\circ} 51' 40''$ East 195.00 feet; thence South $53^{\circ} 31'$ East 168.10 feet; thence leaving said last mentioned boundary South $46^{\circ} 35'$ West 80.51 feet; thence South $50^{\circ} 00'$ West 80.00 feet; thence South $38^{\circ} 10'$ West 128.00 feet; thence South $52^{\circ} 40'$ West 118.00 feet; thence South $58^{\circ} 50'$ West 83.00 feet; thence South $32^{\circ} 55'$ West 26.00 feet; thence South $2^{\circ} 55'$ East 30.00 feet; thence South $26^{\circ} 25'$ West 27.00 feet;

thence South $26^{\circ} 10'$ East 80.00 feet; thence South $33^{\circ} 00'$ East 59.00 feet; thence South $60^{\circ} 40'$ East 50.00 feet thence South $75^{\circ} 25'$ East 92.00 feet; thence South $65^{\circ} 10'$ East 130.00 feet; thence North $81^{\circ} 00'$ East 70.00 feet; thence North $60^{\circ} 50'$ East 134.00 feet; thence North $54^{\circ} 30'$ East 100.00 feet; thence North $60^{\circ} 00'$ East 89.00 feet; thence North $58^{\circ} 40'$ East 85.00 feet to an angle in the Southwestern boundary of said lands of Southern Pacific Transportation Company; thence along said last mentioned boundary as shown on said map South $18^{\circ} 58' 30''$ East 110.00 feet; thence South $64^{\circ} 33'$ East 110.00 feet; thence South $40^{\circ} 44'$ East 170.00 feet; thence leaving said last mentioned boundary South $78^{\circ} 45'$ West 112.00 feet; thence North $89^{\circ} 30'$ West 109.00 feet; thence South $69^{\circ} 15'$ West 75.00 feet; thence South $78^{\circ} 20'$ West 70.00 feet; thence South $45^{\circ} 10'$ West 47.00 feet; thence South $16^{\circ} 30'$ West 57.46 feet; thence South $31^{\circ} 40'$ East 30.00 feet; thence South $50^{\circ} 40'$ East 46.00 feet; thence South $62^{\circ} 30'$ East 80.00 feet; thence

South $56^{\circ} 15'$ East 215.00 feet; thence South $54^{\circ} 20'$ East 125.00 feet; thence South $80^{\circ} 30'$ East 60.00 feet; thence North $78^{\circ} 00'$ East 177.00 feet; thence South $82^{\circ} 15'$ East 52.00 feet; thence South $36^{\circ} 15'$ East 52.00 feet; thence South $5^{\circ} 30'$ East 36.00 feet; thence South $31^{\circ} 00'$ West 32.00 feet; thence South $75^{\circ} 30'$ West 80.00 feet; thence South $55^{\circ} 45'$ West 58.00 feet; thence South $45^{\circ} 00'$ West 190.00 feet; thence North $88^{\circ} 50'$ West 30.00 feet; thence North $29^{\circ} 50'$ West 102.00 feet; thence North $41^{\circ} 15'$ West 80.00 feet; thence North $56^{\circ} 30'$ West 63.00 feet; thence North $68^{\circ} 00'$ West 198.00 feet; thence North $73^{\circ} 45'$ West 155.00 feet; thence South $31^{\circ} 27'$ West 43.70 feet; thence South $35^{\circ} 00'$ East 50.00 feet; thence South $46^{\circ} 30'$ East 52.00 feet; thence South $38^{\circ} 30'$ East 109.00 feet; thence South $49^{\circ} 10'$ East 30.00 feet; thence South $38^{\circ} 40'$ East 45.00 feet; thence South $21^{\circ} 00'$ East 35.00 feet; thence South $7^{\circ} 30'$ East 20.00 feet; thence South $38^{\circ} 30'$ East 30.00 feet; thence South $55^{\circ} 40'$ East 30.00 feet; thence South $50^{\circ} 00'$ East 88.00

feet; thence South $39^{\circ} 30'$ East 186.00 feet; thence South $44^{\circ} 45'$ East 32.00 feet; thence South $28^{\circ} 00'$ East 35.00 feet; thence South $65^{\circ} 25'$ East 48.00 feet; thence South $25^{\circ} 30'$ East 25.00 feet; thence South $19^{\circ} 00'$ West 18.00 feet; thence South $41^{\circ} 15'$ East 100.00 feet; thence South $47^{\circ} 45'$ East 47.00 feet; thence South $36^{\circ} 00'$ East 80.00 feet; thence South $26^{\circ} 00'$ East 70.00 feet; thence South $15^{\circ} 40'$ East 30.00 feet; thence South $47^{\circ} 10'$ East 94.00 feet; thence South $33^{\circ} 30'$ East 60.00 feet; thence South $29^{\circ} 30'$ East 140.00 feet; thence South $73^{\circ} 30'$ East 6.00 feet; thence North $24^{\circ} 10'$ East 70.00 feet; thence North $46^{\circ} 50'$ East 140.00 feet; thence South $77^{\circ} 40'$ East 25.00 feet; thence South $14^{\circ} 00'$ East 58.00 feet; thence South $32^{\circ} 40'$ East 35.00 feet; thence South $35^{\circ} 10'$ West 28.00 feet; thence South $57^{\circ} 30'$ East 22.00 feet; thence South $22^{\circ} 15'$ East 30.00 feet; thence South $30^{\circ} 45'$ West 51.00 feet; thence South $81^{\circ} 15'$ West 40.00 feet; thence South $19^{\circ} 50'$ East 21.00 feet; thence East 25.00 feet; thence South $60^{\circ} 40'$ East 20.00 feet;

thence South $19^{\circ} 00'$ East 28.00 feet; thence South $40^{\circ} 45'$ East 45.00 feet; thence South $19^{\circ} 00'$ East 18.00 feet; thence South $37^{\circ} 10'$ West 25.00 feet; thence South $70^{\circ} 30'$ West 45.00 feet; thence South $2^{\circ} 30'$ East 17.00 feet; thence South $56^{\circ} 00'$ East 35.00 feet; thence North $44^{\circ} 00'$ East 50.00 feet; thence North $77^{\circ} 50'$ East 108.00 feet; thence South $41^{\circ} 50'$ East 42.00 feet; thence South $00^{\circ} 15'$ West 38.00 feet; thence South $27^{\circ} 35'$ West 30.00 feet; thence North $86^{\circ} 40'$ East 55.00 feet; thence South $4^{\circ} 00'$ East 40.00 feet; thence North $80^{\circ} 50'$ East 73.00 feet; thence North $55^{\circ} 10'$ East 70.00 feet; thence North $18^{\circ} 50'$ East 29.00 feet; thence North $62^{\circ} 40'$ East 135.00 feet; thence North $51^{\circ} 00'$ East 65.00 feet; thence North $74^{\circ} 45'$ East 65.00 feet; thence North $56^{\circ} 40'$ East 104.00 feet; thence North $88^{\circ} 00'$ East 34.00 feet; thence South $18^{\circ} 40'$ East 22.00 feet to the Southeastern boundary of lands described as Parcel Two in Deed from Loretta Veronica Leonard to Aptos Seascape Corporation dated March 28, 1968 and recorded April 1, 1968 in Book

1873 of Official Records at Page 613, Santa Cruz County Records from which the Eastern corner of said lands bears North $55^{\circ} 17' 20''$ East 35.00 feet distant; thence along said Southeastern boundary South $55^{\circ} 17' 20''$ West 675.05 feet to a 1 1/2 inch Iron Pipe; thence continuing along said last mentioned boundary South $55^{\circ} 17' 20''$ West 410 feet a little more or less to the Bay of Monterey; thence Northwesterly along the Bay of Monterey 4770 feet a little more or less to a station from which the place of beginning bears North $48^{\circ} 44' 50''$ East; thence North $48^{\circ} 44' 50''$ East 165 feet a little more or less to the place of beginning.

COMPILED DECEMBER 1977 BY WILLIAMS &
ASSOCIATES, CONSULTING CIVIL ENGINEERS.

EXHIBIT B

	1967 Aptos General Plan *	Staff and Planning Commission Recommendations 1972	Ord. 1800 12-5-72
SUBJECT PROPERTY	Beaches and Palisades Ravines and Forests	UBS-50	UBS-50
BENCHLANDS A & C	Residential Medium Density Max.6 Units per acre	RM-3000	R-1-6-PD
BENCHLANDS B	Residential Medium High Density Max. 8 Units per Acre Alternate Use - Hotel	C-2 (Hotel)	R-1-6-PD

- * Two parks are located somewhere within the 110 acres. Parcels A & C. However, the map could be interpreted each of the parks is contained in Subject Property.

EXHIBIT B

ons	Ord. 1800 12-5-72	PROS Mar. 1973	1974 Aptos General Plan
	UBS-50	Acquisition only Immediate Low Priority	Open Reserve and Park Playground
	R-1-6-PD	Not Applicable	Urban Max. 6 Units per Acre
)	R-1-6-PD	Not Applicable	Urban Max. 6 Units per Acre

the 110 acres. They appear to be located in
be interpreted as providing that part of
ect Property.

EXHIBIT C

13.04.306 Planned Unit Development Site Area - Development Standards - Density.

- a. Development Standards. Development standards for site area and dimensions, site coverage, yard spaces, heights of structure, distances between structures, off-street parking and off-street loading facilities and landscaped areas shall, in the aggregate, be at least equivalent to the standards prescribed by the regulations for the district in which the planned unit development is located.

- b. Density. The average number of dwelling units per developable acre shall not exceed the maximum number of dwelling units prescribed by the site regulations or the site area per dwelling unit regulation for the

district in which the planned unit development is located subject, however, to the exception that the average number of dwelling units per developable acre may exceed the maximum number of dwelling units prescribed for a district by not more than 10% in a planned unit development on a site of ten acres or more.

- c. Exception. The development standards and density requirements of subsections (a) and (b) above shall not apply in the "U-BS" Districts wherein the standards and density must be consistent with the applicable General Plan as determined by the Planning Commission or Board, as the case may be. (Ord. 1714, Sec. 2, May 9, 1972).

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CRUZ

Case Number
5 0 1 4 2

APTOS SEASCAPE CORPORATION,

PLAINTIFF(S)

vs.

COUNTY OF SANTA CRUZ,

Defendants(s)

CERTIFICATE OF MAILING

I, Richard C. Neal, County Clerk and Clerk of the Superior Court of the State of California for the County of Santa Cruz, and not a party to the within action, hereby certify that on January 18, 1979, I served copies of the attached JUDGMENT by depositing the enclosed in sealed envelopes with the postage thereon fully prepaid, in the United States Post Office at Santa Cruz, California, addressed as follows:

Dennis Kehoe, Attorney at Law
323 Church Street
Santa Cruz, CA 95060

Peter Townsend
Garrison, Townsend & Hall
2610 Steuart Tower
One Market Plaza
San Francisco, CA 94105

County Counsel
County of Santa Cruz
Santa Cruz, CA 95060

Dated: 1-18-79

Richard C. Neal, County Clerk and Clerk of the
Superior Court, State of California County of Santa
Cruz

/s/ Janis R. Hageman
Deputy Clerk

APPENDIX C

CERTIFIED FOR PUBLICATION

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE**

APTOS SEASCAPE CORPORATION,

**Plaintiff, Cross-defendant
and Appellant,**

v.

THE COUNTY OF SANTA CRUZ et al.,

**Defendants, Cross-complainants
and Appellants.**

**A012759
1 Civ. No. 46963
(Super. Ct. No. 50142)**

**FILED
DEC 23 1982
Court of Appeal - First Dist.
By: CLIFFORD C. PORTER, Clerk
Deputy**

**The County of Santa Cruz (County) and others
appeal from a judgment in an inverse condemnation
action awarding Aptos Seascape Corporation**

(Seascope), a California corporation, over \$3,000,000. The County also appeals from an adverse judgment on its cross-complaint, which alleged an implied dedication to the public of certain of Seascope's beach property.

The Facts

Seascope owns approximately 110 acres of real property in Santa Cruz County, bounded by the Southern Pacific Railroad tracks, Monterey Bay, Camp St. Francis, and an existing residential tract.^{1/} The 110 acres include approximately 40 acres which are above the 100 foot contour line (the "benchlands"), and approximately 70 acres below that contour line. The 70 acres include a beach about a mile long, arroyos, and a line of cliffs, or palisades. It is the 70 acres which are at issue here, and they will be referred to as

1/ The 110 acres are part of 500 acres which Seascope purchased in 1963. In addition to the 110 acres, Seascope still owns approximately 200 acres of "uplands," up the hill and away from the beach; it has developed and sold about 190 acres.

the "Subject Property." The benchlands include three parcels, designated parcels A, B, and C. Before the property was purchased, it was zoned unclassified. As a condition of its purchase, it was rezoned; the 110 acres were zoned residential, with a commercial hotel use allowed on one section of the benchlands.

In 1967 the County adopted the Aptos General Plan (Plan), which indicated that the subject property should remain as open space, or beach and palisades, ravines and forests. According to the Plan, benchlands parcels A and C would be zoned medium density residential (maximum 6 units per acre), and parcel B, medium high density residential (maximum 8 units per acre), with a hotel as an alternate use. The Plan also stated that although development on beaches should be prohibited, compensating higher densities should be permitted on other portions of property in the same ownership. The Plan proposed formation of a new planned community district in the area in part to implement the award of compensating densities. No

such district has ever been formed.

In March 1971 Seascope submitted a tentative subdivision map for the 110-acre parcel. In response, the board of supervisors enacted an interim emergency zoning ordinance to preclude Seascope from further processing any land use proposals until the County completed its study of the area. The application for the map was denied as inconsistent with the Plan. The interim zoning ordinance was extended three times.

Seascope submitted no other formal map or subdivision applications. It did, however, informally submit a development proposal to the planning commission. Although the commission took no action on that plan, it recommended to the board of supervisors a rezoning which would in effect have prohibited development on the subject property, but which would have increased the density recommended by the Plan for benchlands parcels A and C, and allowed a hotel on parcel C.

The County rejected that recommendation. In December 1972 it adopted ordinance 1800, zoning the subject property as U-BS, (unclassified - special building site area regulations) and the benchlands R-1-6-PD (one family residence - planned development district: 6,000 sq. ft. minimum site area).

On March 27, 1973, the County board adopted a Parks, Recreation and Open Space Plan (PROS), which designated the subject property as "acquisition only - immediate action - low priority." In 1974 the County adopted a new Aptos General Plan, in which the property is designated as "Open reserve; park-playground."

In June 1973 Seascope filed a first amended complaint for damages, inverse condemnation and declaratory relief against the County, and others. Seascope alleged that by rezoning, the County deprived it of all reasonable use of certain of its real property, in effect taking that property without paying just compensation. Seascope sought damages of \$23,000,000 for the property allegedly taken, \$12,000,000 for severance

damage to adjacent property, and a declaration invalidating the zoning ordinance. The County cross-complained for declaratory and injunctive relief, alleging that a part of Seascope's property had been impliedly dedicated to the public.

Court trial was held in November 1977. Among its findings, the court found: (1) the Subject Property has always been treated by the County as a parcel separate from the benchlands, and is a "de facto separate parcel"; (2) the only reasonable use that can be made of the Subject Property is for residential purposes; (3) the effect of ordinance 1800 is to allow no development at all on the Subject Property, and to allow a maximum density of one site per 6,000 square feet on the benchlands, with no compensating higher densities permitted; (4) the County does not intend to grant Seascope any compensating higher densities on the benchlands in the future; (5) the County has precluded all reasonable use of the Subject Property and has therefore taken the property to preserve it as open

space; (6) Seascope has fully exhausted all available administrative remedies, and any additional attempt to petition the County for relief would be futile; (7) just compensation in the amount of \$3,150,000 (the fair market value of the Subject Property as of December 5, 1972) is due and owing to Seascope.^{2/}

The court ordered entry of an alternative judgment. As an alternate means of compensation, and in lieu of payment of damages, the judgment granted Seascope compensating higher densities of 40 residential units on its benchlands and 160 residential units on its uplands, "in addition to any other uses and densities that the benchlands and uplands . . . may otherwise yield, which underlying uses and densities are herein referred to as 'Base Densities.' Said Base Densities shall be reasonable and shall not be reduced for the purpose of avoiding the effect of this Judgment." Upon

2/ The facts and the court's findings with respect to the cross-complaint will be set forth in conjunction with the discussion of that complaint.

issuance of building permits by the County and substantial construction by Seascope, Seascope was to convey an open-space easement in perpetuity for the subject property to the County. If Seascope had not received all of the compensating higher densities called for within five years from the date of entry of the judgment, it was to be paid the full damage award. If it had received some but not all of those compensating densities, it was to be paid \$15,750 for each unit not received within the five-year period. This alternative was at the option of the County, which was to (1) file a written notice of acceptance within 60 days of the date of the filing of the entry of judgment, accompanied by a resolution of the board authorizing acceptance, and (2) enact enabling ordinances within that time period. The alternate was void if not exercised. The County did not elect the alternative, and instead appealed from the judgment.

Seascape's Complaint^{3/}

I

In March 1979, two months after judgment was entered in this case, the California Supreme Court held that a landowner who alleges that a zoning ordinance has deprived him of substantially all use of his land, in violation of the Fifth and Fourteenth Amendments of the United States Constitution and article I, section 19 of the California Constitution, may attempt to invalidate the ordinance as excessive regulation through declaratory relief or mandamus, but may not sue in inverse condemnation for damages. (Agins v. City of Tiburon (1979) 24 Cal.3d 266, 273, affd. on another ground, Agins v. Tiburon (1980) 447 U.S. 255.)

The County first argues that in light of Agins, the judgment awarding damages must be reversed.

3/ The California Coastal Commission has filed an amicus curiae brief on behalf of the County in its appeal from the judgment on the complaint.

Seascope contends that Agins is inapplicable because its discussion of the availability of inverse condemnation was dictum, which has "evaporated" with the United States Supreme Court's decision in San Diego Gas & Electric Co. v. San Diego (1981) 450 U.S. 621.

In Agins plaintiffs owned five acres of unimproved land in Tiburon, which they acquired for residential development. The city adopted widespread zoning modifications, designating plaintiffs' land for one-family dwellings and open-space uses. As applied to plaintiffs' five acres, the zoning would permit a maximum of five dwelling units or a minimum of one. The city filed a complaint in eminent domain to acquire the property as open space, but then abandoned those proceedings. Plaintiffs did not make any application to use the property. Instead, they filed a complaint in inverse condemnation and for declaratory relief, alleging the adoption of the ordinance completely destroyed the value of their property. A demurrer was sustained without leave to amend.

The California Supreme Court affirmed. "[T]he need for preserving a degree of freedom in the land-use planning function, and the inhibiting financial force which inheres in the inverse condemnation remedy" persuaded the court that on balance, mandamus or declaratory relief rather than inverse condemnation was the appropriate remedy. (Agins, supra, 24 Cal.3d at pp. 276-277.) The court then concluded that plaintiffs had not established their entitlement to declaratory relief. "[A] zoning ordinance may be unconstitutional and subject to invalidation only when its effect is to deprive the landowner of substantially all reasonable use of his property." (Id., at p. 277.) Because the ordinance on its face permitted plaintiffs to build between one and five residences on their acreage, as a matter of law it did not unconstitutionally interfere with their entire use of the land or impermissibly decrease its value. (Ibid.)

As the Agins court in effect concluded that there had been no "taking" of plaintiffs' land, it can be

argued that its rejection of inverse condemnation as an available remedy for a taking was not necessary to its decision and was therefore dictum. Nevertheless, as the inverse condemnation issue appears to have been elaborately considered, it is obviously entitled to great weight. (6 Witkin, Cal. Procedure (2d ed. 1971) Appeal, § 678, p. 4591, and cases cited therein.) In addition, it is apparent that the Supreme Court itself did not intend its discussion to be considered dictum (see Furey v. City of Sacramento (1979) 24 Cal.3d 862, 871), and it has not been treated as such in subsequent Court of Appeal cases. (See, e.g., Liberty v. California Coastal Com. (1980) 113 Cal.App.3d 491, 498; Gilliland v. County of Los Angeles (1981) 126 Cal.App.3d 610, 617.) Seascope's suggestion that this court treat Agins' inverse condemnation discussion as dictum is unpersuasive.

Seascope's contention that Agins has been disproved by the United States Supreme Court is also

without merit. While that court has expressed reservations about whether a government entity may constitutionally limit the remedy available for a "taking" to nonmonetary relief, it has not yet squarely confronted the question.

Agins itself was affirmed by the United States Supreme Court on the ground that no taking had occurred, and the court did not consider whether a state may limit the remedies available to a person whose land has been taken without just compensation. (Agins v. Tiburon, *supra*, 447 U.S. 255, 263.) In San Diego Gas & Electric Co. v. San Diego, *supra*, 450 U.S. 621, upon which Seascope primarily relies, a power company owned over 200 acres in San Diego where it intended to build a power plant. The city rezoned the property in part as "open space." The company brought an action for inverse condemnation, and was awarded over \$3,000,000. While the case was pending before the California Supreme Court, Agins was decided and the case was retransferred to the Court of

Appeal for reconsideration. That court, in an unpublished opinion, relied on Agins to hold (1) the company could not recover compensation through inverse condemnation; and (2) factual questions remained before it could be determined whether the company had been denied all use of its land. (Id., at pp. 629-632.)

The United States Supreme Court dismissed the appeal for lack of a final judgment, as it had not yet been decided whether any taking in fact occurred. Nevertheless, the court cautioned that the federal constitutional aspects of the state court's decision that the company was not entitled to a monetary remedy "are not to be cast aside lightly" (Id., at p. 633.) Dissenting, Justice Brennan and three others reached the constitutional question, and would have held that once a court establishes a regulatory "taking," the Constitution demands that the government entity pay just compensation for the period commencing on the date the regulation first effected the "taking," and

ending on the date the government chooses to rescind or otherwise amend the regulation. (Id., at p. 658.) Justice Rehnquist concurred with the majority that there had been no final judgment, but also noted that if the appeal were from a final judgment, he would "have little difficulty in agreeing with much of what is said" in the dissent. (Id., at pp. 633-634.)

While the United States Supreme Court may eventually conclude that California cannot limit the remedy available for a taking to nonmonetary relief, it has not yet done so, and this court is obligated to follow Agins. (Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 455.) That portion of the judgment awarding respondent Seascope damages in inverse condemnation must be reversed.

II

Although the trial court found that the subject property had been taken without just compensation, it concluded that the County's "zoning enactments" were a valid exercise of its police power, beyond attack

except in an inverse condemnation action, and dismissed Seascope's cause of action to declare ordinance 1800 invalid. Seascope has cross-appealed from that dismissal.

The trial court reached its conclusion without the benefit of Agins, in which the court held that if the effect of a zoning ordinance deprives the landowner of "substantially all reasonable use of his property," the ordinance may be unconstitutional and subject to invalidation. (Agins, supra, 24 Cal.3d at p. 277.) In light of Agins, it is apparent that the trial court's conclusion is inconsistent with its finding that Seascope has not been allowed any reasonable use of the subject property. If that finding is correct, this court may reverse with directions to enter judgment for Seascope declaring ordinance 1800 invalid on its face.^{4/} (See 6 Witkin, Cal. Procedure (2d ed. 1971)

4/ Declaratory relief is the appropriate remedy by which to seek a declaration that a zoning ordinance is facially unconstitutional. (Agins, supra, 24 Cal.3d at pp. 272-273; see State of California v. Superior court (continued)

Appeal, § 547, p. 4488.)

The County and amicus California Coastal Commission argue, however, that the court's finding is erroneous. They attack that finding on alternative grounds. First, they argue that the court erred as a matter of law when it considered the 70-acre subject property in isolation to determine whether there had been a taking. Instead, it should have considered whether ordinance 1800 deprived Seascope of all reasonable use of its entire 110-acre parcel. Second, they urge that even if the subject property can properly be considered as a separate parcel, there was no taking because Seascope can be awarded density credits on its 40 acres of benchlands (or on its 200 acres of uplands) to compensate for the prohibition against building on the subject property. While they concede that no such credits have yet been awarded,

(Veta) (1974) 12 Cal.3d 237, 251.) A landowner who seeks to challenge the constitutionality of an act's application to his or her lands [i.e., when a development plan has been disapproved] must proceed by administrative mandamus. (Agins) at p. 273.)

they argue that the trial court erred when it found that the zoning ordinances absolutely preclude the award of density credits on the benchlands. In a related argument, the County and amicus also argue that because Seascope has not submitted a development plan for the 110 acres, it failed to exhaust its administrative remedies.

There is no litmus paper test under either federal or state law to determine when a taking has occurred. "[W]hether a regulation is excessive in any particular situation involves questions of degree, turning on the individual facts of each case" (Agins v. City of Tiburon, supra, 24 Cal.3d at p. 277.) The United States Supreme Court has declared itself unable to develop any set formula for determining what constitutes a "taking" for purposes of the Fifth Amendment. (Penn Central Transp. Co. v. New York City (1978) 438 U.S. 104, 123-124.) "The application of a general zoning law to particular property effects a taking if the ordinance does not substantially advance legitimate state

interests, see Nectow v. Cambridge, 277 U.S. 183, 188 (1928), or denies an owner economically viable use of his land, see Penn Central Transp. Co. v. New York City, 438 U.S. 104, 138, n. 36 (1978). The determination that governmental action constitutes a taking is, in essence, a determination that the public at large, rather than a single owner, must bear the burden of an exercise of state power in the public interest. Although no precise rule determines when property has been taken, see Kaiser Aetna v. United States, 444 U.S. 164 (1979), the question necessarily requires a weighing of private and public interests." (Agins v. Tiburon, *supra*, 447 U.S. at pp. 260-261.)

Decisional law under the takings clause of the federal Constitution has been described as "hopelessly confused," with lower courts differing widely in their analytical frameworks for resolving takings challenges. (Note, Developments - Zoning (1978) 91 Harv.L.Rev. 1427, 1464.) That confusion is particularly apparent in cases with facts similar to those at issue, where a

property owner alleges that governmental action restricting the use of a portion of his property constitutes a taking. Some courts consider the only question to be the effect of the regulations on the whole of the owner's contiguous property. (See, e.g., Am. Dredging v. State, Dept. of Environ. Pro. (1979) 169 N.J. Super. 18 [404 A.2d 42]; Multnomah County v. Howell (1972 Or.App.) 496 P.2d 235, 238.) Other courts focus on the restricted acreage, but also consider whether development rights have been denied outright, or transferred elsewhere. (See, e.g., American Sav. & Loan Ass'n v. County of Marin (1981) 653 F.2d 364; Fifth Avenue Corp. v. Washington County, etc. (1978) 282 Or. 591 [581 P.2d 50].)

We are persuaded that the approach suggested in American Sav. & Loan Ass'n v. County of Marin, supra, 653 F.2d 364 is the appropriate one, as it appears to provide for the most equitable accommodation of the conflicting public and private interests at stake in a "takings" challenge such as this one. As in this case,

the dispute in American Sav. & Loan Ass'n involved contiguous acreage under a single ownership, but subject to different zoning restrictions. Plaintiff owned Strawberry Point (20 acres) and Strawberry Spit (48 acres), two contiguous parcels. Marin County adopted a zoning ordinance allowing one multiple residential unit per five acres on the spit, and four per acre on the point. Plaintiff filed suit, claiming the ordinance was facially unconstitutional as applied to both parcels. Summary judgment for the County was granted, on the ground that the zoning permitted a reasonable profitable use of plaintiff's property as a whole.

The appellate court rejected the trial court's approach. It framed the question as "... whether the challenged ordinance create[d] two separate parcels for taking purposes by adopting different zoning designations for each parcel." (Id., at p. 370.) That question, the court explained, was one of fact which could not be resolved on summary judgment. Plain-

tiff's allegations that it had been deprived by a nonuniform ordinance of a substantial, economically viable portion of its property tended to require that the spit be evaluated separately for taking purposes. Nevertheless, without a development plan, it was impossible to tell whether plaintiff had actually been deprived of rights, or whether the county would make some provision for the transfer of those rights, i.e., through density transfers. Only when it was clear how the property would be treated at the development stage could a court determine "whether justice and fairness require[d] that [the property owner's] loss be compensated by the government." (Id., at p. 372.) In other words, when governmental action has divided contiguous property under single ownership into separate zones, and has restricted development in one of those zones, a provision allowing some transfer of development rights from the restricted property or awarding compensating densities elsewhere may preclude a finding that an unconstitutional taking has

occurred.

In support of their argument that the court should not have looked at the subject property in isolation, the County and amicus rely on Penn Central Transp. Co. v. New York, *supra*, 438 U.S. at page 130, wherein the Supreme Court stated: "'Taking' jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has been effected a taking, this Court focuses rather both on the character of the action and on the nature and extent of the interference with rights in the parcel as a whole"

Penn Central is factually distinguishable, however. The language upon which the County and amicus rely was the Supreme Court's response to an argument that a taking could be established merely by showing that an owner's ability to use air rights above Grand Central Terminal had been restricted by the applic-

ability of New York City's Landmarks Preservation Law. (Penn Central, supra, 438 U.S. at p. 130.) The case did not involve contiguous property for which different zoning designations were adopted, and the court's broad language does not resolve the question presented here. (See American Sav. & Loan Ass'n, supra, 653 F.2d at pp. 369-370.)

First, we note that the trial court made a special finding that the County has had the power at all times material herein to determine the base or basic densities for Seascope's uplands, and the compensating higher densities, if any, that would be added to that base density. With respect to the benchlands, however, the court concluded that the county's zoning ordinances absolutely precluded any grant of compensating densities. As we will explain, we have concluded that the court's construction of those ordinances was erroneous, and that the County can grant Seascope compensating densities on both its uplands and benchlands.

The rules of statutory construction are applicable to local ordinances (Kortum v. Alkire (1977) 69 Cal.App.3d 325, 334; see Kasunich v. Kraft (1962) 201 Cal.App.2d 177, 183), and the construction of a statute or ordinance is a question of law for the court. (Wilson v. County of Santa Clara (1977) 68 Cal.App.3d 78, 84.) Generally legislation should be construed, if reasonably possible, to preserve its constitutionality. (Kash Enterprises, Inc. v. City of Los Angeles (1977) 19 Cal.3d 294, 305.) When two alternative interpretations of a statute or ordinance are presented, one of which may be unconstitutional and the other constitutional, the court will choose that construction which will uphold the validity of the statute. (Kortum v. Alkire, supra, at p. 334.) "...[T]he constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary. [Citations.] Adherence to this rule is particularly important in cases raising allegations of an unconstitutional taking of private property." (Hodel v. Virginia

Surface Mining & Recl. Assn. (1981) 452 U.S. 264, 297-295.) In addition, a statute or ordinance must be interpreted with reference to the whole system of law of which it is a part (People v. Comingore (1977) 20 Cal.3d 142, 147); if possible, significance and effect should be given to each section and part thereof. (Zorro Inv. Co. v. Great Pacific Securities Corp. (1977) 69 Cal.App.3d 907, 913.)

As has been stated, the benchlands were zoned P-1-6-PD, which would permit construction of one-family dwellings, at a density of one site per 6,000 square feet. The County contends that Seascope could have been granted greater density on the benchlands had it applied for a Planned Unit Development (PUD) permit. A PUD allows the construction of buildings on a tract free of conventional zoning so as to permit a cluster of structures and some increased density on some portions of a tract, leaving the remainder as open space. (Avco Community Developers, Inc. v. South Coast Regional Com. (1976) 17 Cal.3d 785,

796.) The County's zoning ordinances provided for PUDs, which could be located in any zoning district upon the granting of a use permit. (Santa Cruz County Code, § 13.04.305(b).) A PUD on a site of 10 acres or more, located in an R-1 district, could include any use permitted in any residential or C-1 (neighborhood commercial) district either as a permitted or conditional use. (Id., § 13.04.305(c).)

County Code section 13.04.306^{5/} sets forth density

5/ That section provides in relevant part:
"b. Density. The average number of dwelling units per developable acre shall not exceed the maximum number of dwelling units prescribed by the site regulations or the site area per dwelling unit regulation for the district in which the planned unit development is located subject, however, to the exception that the average number of dwelling units per developable acre may exceed the maximum number of dwelling units prescribed for a district by not more than 10% in a planned unit development on a site of ten acres or more.

"c. Exception. The development standards and density requirements of subsections (a) and (b) above shall not apply in the 'U-BS' Districts wherein the standards and density must be consistent with the applicable General Plan as determined by the Planning Commission or Board, as the case may be. (Ord. 1714, Sec. 2, May 9, 1972)."

standards for a PUD site area.

The trial court apparently read subdivision b of that section to mean that the maximum density which would be allowed in a PUD in an R-1-6 district would be one single-family residential unit per 6,000 square feet, despite the fact that, according to section 13.04.305(c), a hotel or multiple family dwelling was a permitted use in a PUD of over 10 acres located in such a district. In effect, the court's reading nullifies section 13.04.305(c) as it applies to an R-1-6 district.

In brief, the County's position is that a PUD on the benchlands could include multiple dwelling units at a density of one dwelling unit per 1,000 square feet. (Santa Cruz County Code, §§ 13.04.305(c); 13.04.212-A, subd. 10; 13.04.195, subd. a; 13.04.051, subd. a, subsec. 8; 13.04.110-D.) In addition, the County argues that a hotel is a permitted use in a C-1 district. (§ 13.04.212-A, subd. 5.) A hotel is not a dwelling unit, and the density limitations in section 13.04.306 would not be applicable to preclude the award of compensa-

ting densities through approval of a hotel in a PUD on the benchlands.

The County's zoning ordinances are complex and ambiguous, and the relationship among the various sections is confusing, as is apparent from the conflicting testimony from various officials charged at various times with administration of these ordinances.^{6/} Nevertheless, the County's construction of the ordinances is preferable, as it would both give some effect and meaning to all the ordinances at issue, and avoid the possibility of a conclusion that ordinance 1800 is unconstitutional on its face. While the term

6/ The trial court found that during the discussion prior to adopting ordinance 1800, the planning director informed the board of supervisors that no credit could be given for the arroyos and the beach if Seascope submitted a PUD for the benchlands. As the County points out, that conversation was ambiguous; the questioner asked about a PUD; the answer refers to a "PD," which is not the same as a PUD in Santa Cruz County. Moreover, while deference is generally accorded to the interpretation of ordinances by those whose task it is to administer them, in this case there was no unanimity among administrators as to the meaning of these ordinances.

"compensating density" does not appear as such in these ordinances, we conclude that in addition to granting compensating densities on the uplands, the County does have discretion to approve a PUD on the benchlands with varying uses and with a density greater than one single-family dwelling per 6,000 square feet. Accordingly, we cannot conclude that the mere enactment of ordinance 1800 constituted a taking.

"At this juncture, [Seascape is] free to pursue [its] reasonable investment expectations by submitting a development plan to local officials. Thus, it cannot be said that the impact of general land-use regulations has denied [it] the 'justice and fairness' guaranteed by the Fifth and Fourteenth Amendments. [Citation.]" (Fn. omitted.) (Agins v. Tiburon, supra, 447 U.S. 255, 262-263.)

We must emphasize, however, that our conclusion rests on the premise that although development of the subject property is prohibited, the County's ordinances

do permit the grant of compensating densities to Seascope on both its benchlands and uplands in excess of the basic densities which the zoning of those parcels would permit absent any consideration of the subject property. To ensure the County's compliance with our decision, we will direct the trial court to modify its order dismissing Seascope's second cause of action by adding that the cause is dismissed on condition that the County does grant Seascope such compensating densities. Should any dispute arise after Seascope submits its development plan or plans for these parcels, the burden will be on the County to show that it has made provision either for the award of reasonable compensating densities or for some other transfer of development rights to Seascope in exchange for the prohibition against building on the subject property. (See American Sav. & Loan Ass'n, supra, 653 F.2d at p. 372.)

The County's Cross-Complaint

I

In its cross-complaint, the County alleged that Seascape Beach and its access ways had been impliedly dedicated to the public. The court found that prior to the development of Seascape's property, the beach was remote and secluded, with limited access, and public use was casual rather than substantial. As Seascape developed its property, it extended streets, which facilitated beach access. Public beach use gradually increased, and at some point between 1970 and 1973 public use became substantial rather than casual, but there was no substantial public use for any five-year period prior to July 31, 1972.

In that month, the public was granted permission to use the beach for recreational purposes pursuant to Civil Code Section 813.^{7/}

The court concluded that there had been no dedication of any of Seascope's property to the public, except for certain recorded dedications and grants of easements. The court also concluded that Seascope is the owner in fee simple absolute of the real property described in the cross-complaint, and that the seaward boundary of that property is the "mean high tide line." (Civ. Code, § 830.)

^{7/} As amended in 1971, section 813 provides that a holder of record title may record a description of land and a notice that the right of the public to use the land is by permission and subject to control of the owner. The recorded notice is conclusive evidence in a judicial proceeding on the issue of dedication that public use is permissive and with consent. (Stats. 1971, ch. 941, § 1, p. 1845; see also Civ. Code, § 1009; 3 Witkin, Summary of Cal. Law (8th ed. 1973) Real Property, §§ 81 and 369, pp. 1836 and 2064.)

The County contends the trial court's findings with respect to public use of the beach are unsupported by the evidence. The County also contends that even if there has been no implied dedication, the seaward boundary of Seascape's fee is that point reached by the highest annual swells of the sea, and not by the mean high tide line.

"Adverse" use of shoreline property by the public for more than five years can result in an implied common law dedication of a public easement for recreational purposes in such property. (Gion v. City of Santa Cruz [consolidated with Dietz v. King] (1970) 2 Cal.3d 29, 38-39 (hereafter Gion-Dietz); County of Los Angeles v. Berk (1980) 26 Cal.3d 201, 209.) "The question then is whether the public has used the land 'for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone.' [Citations] . . . [T]he question is whether the public has engaged in 'long-continued adverse use'

of the land sufficient to raise the 'conclusive and undisputable presumption of knowledge and acquiescence, while at the same time it negatives the idea of a mere license.' [Citations.]" (Gion-Dietz, supra, at p. 38.)

Litigants seeking to establish such adverse use must show that persons have used the property as they would have used public land, or as if they believed the public had a right to such use. (Gion-Dietz, supra, 2 Cal.3d at p. 39; County of Los Angeles v. Berk, supra, 26 Cal.3d at pp. 213-214.) That belief, as manifested by the public's actions with respect to the property, must be reasonable in light of all the circumstances. (Berk, supra, at p. 216.) Litigants must also show that various groups of persons rather than a limited and definable number used the land (Gion-Dietz, supra, at p. 39), and that public use has been "substantial." (Berk, supra, at p. 218; County of Orange v. Chandler-Sherman Corp. (1976) 54 Cal.App.3d 561, 565.) Evidence that users looked to a governmental agency

for maintenance of the land is significant in establishing an implied dedication to the public. (Gion-Dietz, supra, at p. 39.)

For a fee owner to negate a finding of intent to dedicate based on uninterrupted public use for more than five years, he or she must either affirmatively prove the grant of a license to use the property, or demonstrate a bona fide effort to attempt to prevent public use. While an owner's efforts may have been so minimal as to be inadequate as a matter of law, ordinarily the question is one of fact. (Gion-Dietz, supra, 2 Cal.3d at p. 41; County of Los Angeles v. Berk, supra, 26 Cal.3d at p. 216.)

The evidence with respect to the extent of the public's use of the beach prior to 1972 is in conflict, and it is elementary that this court is without power to reweigh the evidence and reach a factual determination contrary to that of the trial court. All factual matters must be viewed most favorably to the prevailing party and in support of the judgment. "In brief,

the appellate court ordinarily looks only at the evidence supporting the successful party, and disregards the contrary showing' [Citation.]" (Campbell v. Southern Pacific Co. (1978) 22 Cal.3d 51, 60, original italics.)

Viewed in that light, the evidence supports the trial court's findings. Prior to its purchase by Seascope, the area was part of a fenced horse and cattle ranch. In the middle of the ranch was a path to the beach, blocked by two wooden gates, which were kept closed. Ranch owner Krag only occasionally saw people walking along the beach at water's edge, fishing and clamming; not many people got onto the beach.

Seascope acquired the property in 1963. At the time the property above the beach was being used for farming, and the beach was generally desolate. Seascope developed the property north of Seascope Beach into a residential subdivision, and advertised it as including a private beach. As Seascope commenced street improvements, its employees noticed an

increase in people on the beach. Seascope hired people, including off-duty sheriff's deputies, to patrol the property and eject trespassers. On some occasions Seascope had vehicles towed away which were parked on the roads which led toward the beach. Eventually the corporation hired a fulltime security man who patrolled the beach in uniform, in a jeep, and was instructed to eliminate trespassers. At the time, Seascope permitted individuals from Rio del Mar tract to use the beach. On occasion Seascope gave specific permission to a group, such as a Boy Scout group, to use the beach. Seascope also gave sales promotional activities, and gave out passes for weekend use or day use. There was no evidence of any governmental maintenance of the area.

That evidence is sufficient to support the trial court's findings that prior to 1972, public use of the beach was not sufficiently substantial for any five-year period to negate the idea of mere license.

The County contends the public's use of the property is comparable to that of the public on the Dietz property in Gion-Dietz, apparently contending that the public's use is sufficient as a matter of law. The County's recitation of the facts in support of that contention, however, ignores the rule that this court must view those facts in the light most favorable to Seascope. In Dietz, the public in substantial numbers had used the beach and a road to the beach for over 100 years, to camp, picnic, collect driftwood, fish, and decorate graves at a small cemetery plot on the beach. Groups of Indians camped on the beach for weeks during the summer. The beach had also been used for commercial fishing, and there was no evidence that the respective fee owners had ever attempted to prevent this use. The evidence in this case, viewed in the light most favorable to the judgment, establishes no similar substantial use.

II

Civil Code section 830 provides in relevant part: "Except where the grant under which the land is held indicates a different intent, the owner of the upland, when it borders on tidewater, takes to ordinary high-water mark; . . ." The high water mark refers to an average height of the high water at a particular place over a long period of time, ascertainable by reference to monuments and tidal data of the United States Coast and Geodetic Survey. (People v. Wm. Kent Estate Co. (1966) 242 Cal.App.2d 156, 159.)

Among its findings on the cross-complaint, the court found that the subject property is "included within the boundaries of the Aptos and San Andreas Mexican Grants, as surveyed, confirmed, patented, and conveyed by the United States . . . to Seascope's predecessors in the title pursuant to the Private Land Claims Act of 1851" The court concluded that pursuant to Civil Code section 830, the seaward boundary of the property is the "mean high tide line,"

and that the federal patent did not indicate a different intent.

The County disagrees, and argues as follows: (1) the boundary is that provided by the Mexican law which prevailed when the original land grants were made; (2) that law provided that grants of land bordering on the sea bestowed title only to the point reached by the sea in its "highest annual swells" (in other words, to the highest high water mark); (3) Seascope's fee, therefore, extends only to the foot of the bluffs, and not as far toward the bay as the mean high tide line.

To fulfill its obligations under the Treaty of Guadalupe Hidalgo, under which California became a part of the United States, Congress enacted the Act of March 3, 1851, to ascertain and settle land claims in California. The act required persons claiming right or title in lands from the Spanish or Mexican governments to present their claims to a commission for settlement. Following a decree of confirmation by the

commission, the land was surveyed by the Surveyor General and a map of the survey prepared. Thereafter, on proof of confirmation and approved survey to the General Land Office, the federal government issued a patent to the claimant. The patent issued on confirmation of a land grant "was conclusive of both (a) the validity of the grant . . . and (b) the land's boundaries. U.S. v. Coronado Beach Co. (1921) 255 US 472. Thus, if a patent conveyed title to the ordinary high tide line, there was no basis for an assertion that, under Mexican law, grants carried only to the highest high tide line and that consequently a strip of land between that line and the patent line remained public domain subject to entry." (Bowman, 2 Ogden's Revised Cal. Real Property Law (Cont.Ed.Bar 1975) §§ 26.2-26.3, pp. 1238-1239; see also 3 Witkin, Summary of Cal. Law (8th ed. 1973) Real Property, § 3, p. 1774.)

The record includes the 1860 and 1877 federal patents confirming the two land grants, and the 1858 and 1860 field notes of the final surveys of each

rancho. With respect to the Aptos Rancho, the notes state that the boundaries of the rancho are "well defined by the Bay of Monterey, the Shoquel Rancho, the Shoquel Augmentation Rancho, and the San Andres Rancho" The notes also state: Commenced at the junction of the Sanjon de Boregas with the sea at the corner No. 2, of the Shoquel Rancho . . . I marked this post A. No. 1, and thence meander the sea coast." Similarly, the field notes of the final survey of the Rancho San Andres state in part: "To true corner at foot of bluff on beach of Monterey Bay Thence following the meanders of the shore of Monterey Bay at high water mark. . . . Surveyor Thomas Williams testified for Seascope that the boundary along Monterey Bay indicated in the patents and the field notes was the mean high water line.

The County argues at length that Williams' testimony was not credible, and offers its own complicated interpretation of the old field notes, in its effort to establish that the boundary as confirmed by the

patents was not the mean high tide line.

Despite the County's arguments, United States v. Pacheco (1864) 69 U.S. (2 Wall.) 587 and Coburn v. San Mateo County (C.C.N.D.Cal. 1896) 75 Fed. 520 are dispositive. Pacheco is an appeal from a decree confirming title to and the location of a Mexican grant to land on the east side of San Francisco Bay. The decree described the land as bounded "on the west by the bay." (United States v. Pacheco, supra, at p. 588.) The Supreme Court held that according to either common law or Mexican civil law, when the bay was given as a boundary and when nothing in the decree suggested otherwise, that boundary was the line of the ordinary high water mark. (Id., at p. 590.)

In Coburn, owner's land, bounded on the west by the Pacific, was originally part of a Mexican grant, on which a federal patent was issued. The description of its boundaries in the grant and the patent stated that the land bordered "to the west on the sea." (Coburn v. San Mateo County, supra, 75 Fed. at p. 526.) However,

meander lines on the plat of the rancho, surveyed by the United States surveyor, seemed to indicate that the western boundary of the land was on the bluff bordering on the sea, and not on the beach itself. Owner claimed the grant from the Mexican government included the tidelands. In an argument similar to that of the County in this case, respondent in Coburn relied on the meander lines and claimed that owner's grant did not even extend to the tidelands, but ended on the bluff.

The court disagreed with both parties. Relying on United States v. Pacheco, supra, 69 U.S. 587, it held that under common law or Mexican civil law, because the bay was given as the boundary in the grant, that boundary was the high water mark. As for the meander lines, "it is well settled that they do not limit the boundary of the grant. Their purpose is to ascertain the quantity of land to be charged for." (Coburn, supra, 75 Fed. at p. 530.) The high water mark, and not the meander line, was the boundary. (Id., at p.

531; see also Stillwell v. Jackson (1936) 5 Cal.2d 165, 169 [In the absence of any other declared purpose, a meander line of description, used as a means of measuring and correctly locating the shore line, represents the line of ordinary high tide].)

The trial court did not err when it concluded that the seaward boundary of Seascope's fee was the mean high tide line, and that the federal patent did not indicate a different intent.^{8/}

The County also contends that even if the bayward boundary of Seascope's lands extends to the mean high water line, the beach up to the highest high water

8/ City of Los Angeles v. Venice Peninsula Properties (1982) 31 Cal.3d 288, decided after briefing was completed in this case, is distinguishable. In that case, notwithstanding the rule that a federal patent conclusively determines the boundaries of a grant, the Supreme Court held that the trial court properly took evidence as to whether a lagoon was an arm of the sea (and therefore tidelands) in 1850, as there was an ambiguity and inconsistency between the terms of the patent and the opinion of the Land Office Commissioner who had approved the underlying survey. (*Id.*, at pp. 295-296.) In this case, however, there were no comparable inconsistencies; rather, the question was the meaning of the terms of the patents.

mark is burdened with a "public servitude" similar to the "public trust easement" which exists in California tidelands conveyed by patent to private individuals. (See Marks v. Whitney (1971) 6 Cal.3d 251, 257-261.)

"Tidelands" are lands between the lines of mean high tide and mean low tide, covered and uncovered successively by the tidal ebb and flow. (Marks v. Whitney, supra, 6 Cal.3d at pp. 257-258; City of Berkeley v. Superior Court (1980) 26 Cal.3d 515, 518-519, fn. 1.) When tidelands have been granted by the state to a private party, that party receives the title to the soil, subject to the public's right to use the property for purposes such as commerce, navigation, fishing, as well as for environmental and recreational purposes. (City of Los Angeles v. Venice Peninsula Properties, supra, 31 Cal.3d at p. 291; City of Berkeley, supra, 26 Cal.3d at p. 521; Marks v. Whitney, supra, 6 Cal.3d at p. 259.) In other words, such lands are subject to a public trust easement. (Ibid.) The County's theory in this case is: (1) under Mexican law,

there was an analagous public servitude in lands between the highest high water line and the mean low tide; (2) the servitude was not extinguished by issuance of the federal patents; (3) even if Seascope took title to the mean high tide line, the strip of land between the highest tide line and the mean high tide line remains subject to an easement for public use.

In light of City of Los Angeles v. Venice Peninsula Properties, supra, 31 Cal.3d 288, we conclude that the trial court correctly concluded that Seascope's property was not subject to any servitude. In that case, the court held that the public trust doctrine applies to tidelands which were originally acquired by private persons from the Mexican government prior to the time California was ceded to the United States, and which were later patented to the owners by the federal government in accordance with the requirements of the Treaty of Guadalupe Hidalgo. (Id., at p. 291.) While the case confirms the County's analysis of the effect of a federal patent, it does not support the

County's interpretation of the extent of the public's rights in land adjacent to the sea under Mexican law. The court flatly stated, "The law of Mexico ... declared that the public had a right to the use of the tidelands" (Id., at p. 297, emphasis added.) As already explained, "tidelands" are lands between the lines of mean high tide and mean low tide. (Marks v. Whitney, supra, 6 Cal.3d at pp. 257-258.) Nothing in City of Los Angeles supports the notion that the public's rights under Mexican law extended beyond the tidelands to the highest high water line, as the County would have this court hold.

That portion of the judgment concluding Seascope's property has been taken without just compensation and awarding damages for the taking is reversed. The trial court is directed to modify that portion of the judgment dismissing Seascope's second cause of action for declaratory relief by conditioning that dismissal on the grant of compensating densities to Seascope; as modified, that portion of the judgment

is affirmed. Judgment in favor of Seascope on the County's cross-complaint is affirmed. Each party to bear its own costs.

CERTIFIED FOR PUBLICATION

Scott, J.

We concur:

White, P.J.

Barry-Deal, J.

Trial Court: Superior Court, County of Santa Cruz

Trial Judge: Roland K. Hall

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APPENDIX D

1 CIVIL NO. 46963

COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

APTOS SEASCAPE CORPORATION,
a California corporation,

Plaintiff and Cross-Defendant,
Respondent and Cross-Appellant,

v.

THE COUNTY OF SANTA CRUZ,
BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CRUZ,
PLANNING COMMISSION OF THE
COUNTY OF SANTA CRUZ, et al.,

Defendants and Cross-Complainants,
Appellants and Cross-Respondents,

AND RELATED ACTION.

FILED

JAN - 6 1983

Court of Appeal - First App. Dist.

By CLIFFORD C. PORTER, Clerk
Deputy

RESPONDENT AND CROSS-APPELLANT'S
PETITION FOR REHEARING

**Appeal from the Judgment of the Superior Court
of the State of California, in and for the
County of Santa Cruz
Honorable Roland K. Hall, Judge**

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AND RELATED ACTION.

RESPONDENT AND CROSS-APPELLANT'S
PETITION FOR REHEARING

To the Presiding Justice, and to the Associate
Justices of the Court of Appeal of the State of

California, First Appellate District, Division Three. Respondent and Cross-Appellant, Aptos Seascap Corporation, petitions for a rehearing to reconsider that portion of the Court of Appeal decision dealing with Aptos Seascap Corporation v. County, et al., only, and not that portion of the decision with respect to the Cross-Complaint. Said decision was filed in this Court and in this action on December 23, 1982. The following grounds are:

1. Substantial issues of law and fact, and each of them, were incorrectly stated.
2. Substantial issues of law and fact, and each of them, were not considered.
3. Legal and factual error, and each of them.

I

RESPONDENT AND CROSS-APPELLANT IS ENTITLED TO RECOVER COSTS, INCLUDING EXPERTS' FEES AND ATTORNEY'S FEES, AGAINST THE COUNTY OF SANTA CRUZ.

The trial court Judgment, provided, inter alia, the County of Santa Cruz with the option to allow higher densities. Yet, the County chose not to exercise this option and, according to the lower Court Judgment, monetary damages were awarded. CT 2010-2012, The trial court Judgement further provided that, regardless of whether monetary damages or higher densities were chosen by the County, the landowner was awarded costs of suit, including experts' fees and attorney's fees. CT 2012, L. 11-14.

This Court of Appeal ordered, inter alia, that the County grant Seascope higher densities. Court of Appeal decision (hereinafter referred to as CA), page 20.

Costs of suit including attorney's fees and experts' fees, on both the trial court and appellate court levels, should be awarded to Seascope. Sections 1021.5 and 1036 of the Code of Civil Procedure, and each section. Further, the attorney's Fees Award Act evidences a clear legislative intent that costs of suit including

expert fees and attorney's fees must be awarded Seascope. 42 U.S.C. 1988; Bonnes v. Long (1979) 599 F.2d 1316, 1319; Johnson v. State of Mississippi (1979) 606 F.2d 635, 637-639; Kimbrough v. Arkansas Activities Assoc. (1978) 574 F.2d 423.

II

MONETARY DAMAGES ARE REQUIRED BY, INTER ALIA, THE "JUST COMPENSATION" CLAUSE OF THE UNITED STATES CONSTITUTION.

Seascope respectfully submits that the Court of Appeal erred in determining that the Judgment awarding Seascope damages in inverse condemnation must be reversed.

The comments of the California Supreme Court in Agins v. Tiburon (1979) 24 C3d 266 concerning a damage award in inverse condemnation is dicta. See CA, page 7. Second, the Court of Appeal is duty-bound to follow the United States Constitution rather

than the misdirection in Agins. California Constitution, Article III, Section 1. The Fifth and Fourteenth Amendments to the United States constitution require the payment of "just compensation" including damages to the landowner. This is the law of the country. See Burrows v. City of Keene (1981) 432 A.2d 15, 20; In Re Aircrash in Bali, Indonesia (1982, 9th Cir.) 684 F.2d 1301, 1311, fn. 7. Third, the rights of this landowner are basic civil rights that have long been protected by both the United States Constitution and the Federal Civil Rights Act, 42 U.S.C. §1983. Lynch v. Finance Corp. (1972) 405 U.S. 538, 552. The United States Supreme Court clearly affirmed that a "damage remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees ..." Owens v. City of Independence (1980) 445 U.S. 622, 651, 100 S.Ct. 1398, 1415-1417; see also Justice Brennan's dissent summarizing the viewpoint of the majority in San Diego Gas and Electric Co. v. San Diego (1981) 450 U.S. 621, 654-657,

101 S.Ct. 1287, 1305 and 1308.

The decision of the Court of Appeal did not consider the Federal Civil Rights Act, 42 U.S.C. 1983, which provides, inter alia, a damage remedy. Seascope is entitled to the monetary damages as provided in the lower court Judgment as well as interim damages. The County of Santa Cruz refused to exercise the option to provide additional densities as set forth in the trial court Judgment and, therefore, chose to pay monetary compensation. fn.1.

fn.1. "Just compensation" mandated by the United States Constitution requires, inter alia, certainty, a full equivalent, and monetary compensation. Fifth and Fourteenth Amendments of the United States Constitution. Neither higher densities nor, for that matter, invalidation are "just compensation". Further, neither can be used to avoid a taking. The State courts must yield to the federal constitutional requirements including "just compensation". City of Oakland v. Oakland Raiders (1982) 31 C3d 656, 663.

III

OTHER ERRORS

Respondent respectfully notes several other errors in the decision of the Court of Appeal. Seascope alleged and proved and the trial court found and determined after an extended court trial that, as a result of a series of actions and inactions by the County over a lengthy period of time, the County of Santa Cruz violated the Constitutional rights of Seascope and a taking had occurred. e.g., see First Amended Complaint, CT 71 and 76-77; Findings of Fact No. 36 and 37, CT 1989; Conclusions of Law No. 1, CT 1999. Nevertheless, the Court of Appeal decision categorizes this matter as a "mere" rezoning case. See CA pages 3 and 19. This is an error.

The decision of the Court of Appeal is in error with respect to its determination that the trial court erroneously viewed the County ordinances, with particular reference to the PUD Ordinances. CA, pages 15-19. Initially, the trial court had an extended

opportunity to consider the County ordinances in the context of their formulation, application and utilization by the County within the crucible of this factual situation and prior to any litigation arguments set forth by the County. The County actions and inactions over the years are abundantly clear and a taking has occurred. Extensive testimony, both oral and documentary, was taken by the Court and it clearly found and determined that the County blatantly demonstrated an absolute unwillingness to provide Seascope with any higher densities, whatsoever (regardless of the nature of the same), as evidenced by the County's actions and inactions over a period of time. e.g., Finding of Fact no. 22, 23, 25 and 31, CT 1987-1988. Not only is the lower court Judgment presumed to be correct, but any conflict must be resolved in favor of the same. Further, a "reviewing court is without power to substitute its deductions for those of the trial court". Campbell v. Southern Pacific Co. (1978) 22 C3d 51, 60. Thus, the trial court, having considered

the County ordinances and conduct in the crucible of an actual fact situation, properly made its determination. This must be followed in the appellate review process.

Further, even looking at the naked County ordinances disassociated from this factual situation, the County created an impediment to the provision of higher densities of any kind to the landowner. For example, the County specifically required in its own ordinance that, in order to grant a PUD in a UBS zone district, the "standards and densities must be consistent" with the Aptos Area Plan. §13.04.306c of the County Ordinances; Exhibit CC, pages 13-95. Confirming that which the County has earlier accomplished the Aptos Area General Plan adopted in 1974 not only designated the subject 70 acres "park-playground", but also made no provision for compensating higher densities. RT I, 216, RT VII, 73, L. 21-23. The earlier 1967 Aptos Area Plan called for the creation of a new PLANNED COMMUNITY DISTRICT

as a mechanism to provide compensating higher densities. Yet, no such Planned Community District was ever formed by the County. RT I, 25-26, L. 6; RT XV, 168, L. 16-169, L. 9; Respondent's Appellate Brief dated August 3, 1981, pages 14-17. The dialogue between the Planning Director (Monasch) and the Board of Supervisors clearly points this out, not only when reviewed by itself but especially when considered in the context of all the facts of this case. Exhibit 22.

Seascape respectfully submits that the Petition for Rehearing be granted.

Respectfully submitted,

January 6, 1982.

ADAMS, LEVIN, KEHOE,
BOSSO, SACHS & BATES
A Professional Corporation

/s/ Dennis J. Kehoe
DENNIS J. KEHOE, Attorney for
APTOS SEASCAPE CORPORATION
Respondent and Cross-Appellant

DECLARATION OF SERVICE BY MAIL

R: APTOS SEASCAPE v. COUNTY OF SANTA
CRUZ, NO. 1 CIVIL 46963

I, JANE A FARINSKY, declare that I am over 18 years of age, and not a party to the within cause; my business address is 323 Church Street, Santa Cruz, CA 95060. I served a true copy of the attached RESPONDENT AND CROSS-APPELLANT'S PETITION FOR REHEARING on each of the following, by placing same in an envelope addressed as follows:

Clair A. Carlson
County Counsel
701 Ocean Street
Santa Cruz, CA 95060

Peter L. Townsend, Esq.
Garrison, Townsend & Hall
Post Office Box 7420
San Francisco, CA 94120

Honorable Roland K. Hall
Judge of the Superior Court
701 Ocean Street
Santa Cruz, CA 95060

T. Roy Gorman, Chief Counsel
California Coastal Commission
631 Howard Street
San Francisco, CA 94105

Each said envelope was then, on January 6, 1983 sealed and deposited in the United States mail at Santa Cruz, California, the county in which I am employed, with the postage thereon fully prepaid.

I have also caused a copy of the above described document to be deposited with the Clerk of the Court from which the appeal was taken, to be by said Clerk delivered to the Judge who presided at the trial of the cause in the lower court.

I have delivered seven copies of the above described document to the Clerk of the Supreme Court of the State of California.

Executed on January 6, 1983 at Santa Cruz, CA. I declare under penalty of perjury that the foregoing is true and correct.

/s/ J. Farinsky
JANE A. FARINSKY

APPENDIX E

COURT OF APPEAL
OF THE STATE OF CALIFORNIA
IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION THREE

Aptos Seascape Corporation,

Plaintiff and Appellant,

vs.

County of Santa Cruz, etc. et al.

Defendants and Appellants.

1/Civ.46963

No. A012759

Superior Court No. _____

FILED

JAN 21 1983

Court of Appeal - First Dist.

By CLIFFORD C. PORTER, Clerk

Deputy

BY THE COURT;

The petitions for rehearing are denied.

Dated JAN 21 1983

WHITE, P.J.

APPENDIX F

NO. 1 Civil 46963

**IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

APTOS SEASCAPE CORPORATION,
a California corporation,

Plaintiff and Cross-Defendant,
Respondent and Cross-Appellant,
and Petitioner herein,

v.

**COUNTY OF SANTA CRUZ,
BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CRUZ,
PLANNING COMMISSION OF THE
COUNTY OF SANTA CRUZ, et al.,**

Defendants and Cross-Complainants,
Appellants and Cross-Respondents,
and Respondents herein.

AND RELATED ACTION.

Superior Court
No. 50142

FILED
JAN 31 1983
LAURENCE P. GILL, Clerk
Deputy

**APTOS SEASCAPE CORPORATION'S
PETITION FOR HEARING**

From a Portion, Only, of the Decision of the Court of
Appeal of the State of California, First Appellate
District, Division Three

DENNIS J. KEHOE, ESQ.
ADAMS, LEVIN KEHOE,
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APTOS SEASCAPE CORPORATION

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NO. 1 CIVIL 46963

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

APTOS SEASCAPE CORPORATION,
a California corporation,

Plaintiff and Cross-Defendant,
Respondent and Cross-Appellant,
and Petitioner herein,

v.

COUNTY OF SANTA CRUZ,
BOARD OF SUPERVISORS OF THE
COUNTY OF SANTA CRUZ,
PLANNING COMMISSION OF THE
COUNTY OF SANTA CRUZ, et al.,

Defendants and Cross-Complainants,
Appellants and Cross-Respondents,
and Respondents herein.

AND RELATED ACTION.

Superior Court
No. 50142

APTOS SEASCAPE CORPORATION'S

PETITION FOR HEARING

TO THE HONORABLE CHIEF JUSTICE OF
CALIFORNIA AND THE ASSOCIATE JUSTICES OF
THE SUPREME COURT OF CALIFORNIA:

INTRODUCTORY CLAUSE

A. Petition for Hearing from a Portion Only, of the Decision of the Court of Appeal.

In the pleadings, the County of Santa Cruz (County) filed a Cross-Complaint against Aptos Seascope Corporation (Seascope) claiming under Gion various items. The Trial Court found in favor of Seascope and against the County on the Cross-Complaint and Judgment was entered by the Trial Court in favor of Seascope and against the County on said Cross-Complaint. CT 1991-1999; CT 2001; and CT 2013. The decision of the Court of Appeal filed on December 23, 1982 affirmed, in total, the Judgment of the lower court on the Cross-Complaint. See p. 31. Seascope does not Petition for a Hearing on that portion of the Decision of the Court of Appeal affirming the Judgment in favor of Seascope and against the County on the Cross-Complaint. Seascope does Petition for a Hearing on the other portion of the

Decision of the Court of Appeal dealing with the Judgment of the Trial Court on the action by Seascope against County.

B. Trial Court.

A First Amended Complaint for Damages and Inverse Condemnation and Declaratory Relief was filed on behalf of Seascope. It set forth a FIRST CAUSE OF ACTION seeking monetary damages under, inter alia, inverse condemnation and a SECOND CAUSE OF ACTION seeking declaratory relief and monetary damages. CT 68-95.

The County filed Motions for Summary Judgment and Judgment on the Pleadings. CT 669-670. Legal Memoranda was filed in opposition thereto by Aptos Seascope. CT 774-824; CT 840-845; CT 992-1008. The hearing on the Motion was held on July 29, 1977 and all of the County's Motions were denied except for the Motion for Judgment on the Pleadings to the SECOND CAUSE OF ACTION for declaratory relief and monetary damages (referred to as Count 2 in the Order). As

to the SECOND CAUSE OF ACTION, the Judgment on the Pleadings was granted. CT 1018-1019. The County filed yet another Motion for Summary Judgment. Substantial documentation was once again filed in opposition to the same. CT 1418-1428. The Motion was considered and denied. CT 1444; CT 2010, L. 4-9.

Trial Briefs were filed by the parties. CT 1404, et seq.; CT 1429, et seq.; CT 1464, et seq.; CT 1474, et seq. This was a Court Trial and it lasted from May 8, 1978 through June 29, 1978. CT 1444 and 1555. The Court also viewed the subject property. CT 1496. After closing arguments, post trial briefs were submitted to the Court. CT 1640, et seq. and 1716, et seq. Subsequently, a Memorandum of Intended Decision was filed by the Court. CT 1756-1784. Findings of Fact and Conclusions of Law were requested. CT. 1785. Findings of Fact and Conclusions of Law were prepared and filed by the Court. CT 1979-2006. At the same time, a Judgment was prepared and filed. CT

2007-2016.

The Trial Court, after an extremely lengthy Court Trial, determined that the federal constitutional rights of Aptos Seascape were violated including those rights protected under the due process clause and the just compensation clause. Among other findings, the evidence clearly established and the Trial Court properly determined that: (1) The actions and inactions of the County over a lengthy period of time has deprived Seascape of all reasonable, practical, beneficial and economic use, and each of them, of the subject 70 acres for which just compensation was due, owing and payable by County to Seascape. CT 1999, L. 16-21; CT 1987, L. 1-21; CT 1999, L. 12-13; RT I, 182-184; RT I, 218-219, L. 6; RT I, 223; RT IV, 99 and 125; RT II, 245, L. 4-25; RT II 249, L. 19-23; RT XV 93, L. 16-94, L. 21; RT XV 152, L. 16-23; RT IV 9 L. 12- 10, L. 4; RT IV 107, L. 13-19. (2) The County caused and accomplished a de facto taking of the subject 70 areas entitling Seascape to Judgment against County in

inverse condemnation. CT 1999, L. 22-23. (3) By its actions and inactions over a period of time, the County had taken the subject property for the benefit of the public, for which public funds may be expended by County. CT 1989, L. 1-15; CT 2000, L. 1-4. (4) Seascope had fully exhausted all available administrative remedies. Any additional attempt by Seascope to petition the County for relief would be futile. CT 1988, L. 17-19; RT I 216-218 and 223; RT IV 94 L. 2-23. (5) The subject property had been treated by the County as a separate parcel. The subject property is a de facto separate parcel of property from other land owned by Seascope. CT 1987, L. 28, CT 1988, L. 2; RT II 11, L. 3-24 and 59; RT I 155, L. 9-12. (6) Just compensation in the amount of \$3,150,000 as well as costs of suit including attorney's fees and experts' fees were due, owing and payable by County to Seascope. CT 2000, L. 8-21; CT 1990, L. 8-28; RT II 249; RT IV 41.

The Judgment provided, as an alternate means of compensation and at County's sole discretion, County could provide Seascope with 200 compensating higher densities on other property owned by Seascope. The Judgment also stated that, if the County chose not to exercise the alternate form of Judgment, the principle amount of \$3,150,000, together with interest thereon was awarded. CT 2010-2013.^{1/} Regardless of what

fn.1. The alternate form of Judgment is contained in the Clerk's Transcript, pages 2010-2013. Highlighting the same reveals the following:

a. Within 60 days of the entry of judgment, the County had the opportunity to file a resolution accepting this option and enacting and enabling an ordinance providing a mechanism for compensating higher densities. CT 2012, L. 15-27.

b. A five-year period was provided for the processing of 200 compensating higher densities by the County. CT 2011, L. 8 to CT 2012, L. 7.

c. If the landowner was not provided all the 200 higher compensating higher densities within the five-year period, then \$15,750, plus interest, per unit, not so provided was set forth. CT 2011, L. 19 to CT 2012, L. 7.

d. The Court further retained jurisdiction of this matter. CT 2012, L. 8-10.

e. The alternate, if not exercised by the County of Santa Cruz, was void. The County did not chose this alternate (a copy of the Trial Court Judgment is attached for the convenience of the Court). CT 2012, L. 28 to CT 2013, L. 6.

mode of compensation was chosen by the County, Seascope was awarded its costs of suit including experts' fees and attorney's fees. CT 2012, L. 11-14.

C. Court of Appeal.

After extremely lengthy briefs filed on behalf of County, California Coastal Commission (Amicus Brief) and Seascope, and subsequent to oral argument, the Court of Appeal filed its Decision on December 23, 1982, a copy of which is attached hereto and incorporated herein by reference. Petitions for Rehearing were filed on behalf of the County and Coastal Commission to which an Answer was filed by Seascope. Seascope, also, filed a brief Petition for Rehearing and no answer thereto was filed. All Petitions for Rehearing were denied by the Court of Appeal.

Based upon Agins v. Tiburon (1979) 24 C3d 266, the Court of Appeal, incorrectly, reversed that portion of the Judgment awarding Seascope damages in inverse condemnation, concluding that a landowner may not

sue in inverse condemnation for damages. Court of Appeal Decision (hereinafter referred to as CA), page 10. Nevertheless, the Court of Appeal did acknowledge that "... the United States Supreme Court may eventually conclude that California cannot limit the remedy available for a taking to nonmonetary relief ..." CA 9.

The Court of Appeal, with respect to the SECOND CAUSE OF ACTION for Declaratory Relief and Monetary Damages, affirmed the dismissal of the same; however, the dismissal was modified wherein the Trial Court was directed, inter alia, to "... modify its order dismissing Seascope's Second Cause of Action by adding that the cause is dismissed on condition that the County does grant Seascope such compensating densities."⁴ CA 20 and 31. The Court of Appeal further directed that each party bear its own costs. CA 31.

II

GROUND'S UPON WHICH A HEARING SHOULD BE GRANTED

The grounds for ordering a hearing include (1) there needs to be a settlement of important questions of law, and (2) the state court decisions need to conform with the United States Constitution and thereby create uniformity. Rules of Court, §29. Further, substantial issues of law and fact, and each of them, are incorrectly stated in the Decision of the Court of Appeal. Also, the Court of Appeal did not consider substantial issues of law and fact, and each of them.

The Federal Constitution requires the award of monetary damages and a limitation to purported nonmonetary relief is contrary to that same Federal Constitution. Moreover, cost of suit including attorney's fees and experts' fees must be awarded to Seascope under the just compensation clause as well as 42 U.S.C. §1988 and under California law §1021.5 and

§1036 of the Code of Civil Procedure. Further, the Federal Civil Rights Act, 42 U.S.C. §1983, et seq., guarantees injunctive relief and monetary relief. Neither the Federal Constitution nor the Federal Civil Rights Act can be tampered with, altered, or amended by either the State Legislature or the State Judiciary.

III

THE FEDERAL CONSTITUTION MANDATES, INTER ALIA, THE AWARD OF MONETARY DAMAGES AS SET FORTH BY THE TRIAL COURT IN THE JUDGMENT.

A. The County has the Power to Expend Public Funds.

County has not only the power to expend public funds to purchase land for parks, but also to purchase the fee or any lesser interest or right in real property in order to acquire, maintain or preserve open space. Gov. Code §§ 6952 and 51073. This legislative declaration is significant in this litigation in that the expressed legislative purpose is to authorize the

expenditure of public funds to acquire "... the fee or any lesser interest, development right, easement, covenant or other contractual right ..." necessary to preserve open space and that the same constitutes a "... public purpose ..." for which public funds may be expended. Gov. Code §§ 6953 and 51073.

County does not, because it cannot, argue that it lacks the power to acquire the subject property through appropriate eminent domain proceedings. Unfortunately, County has sought to do by indirection what it had the clear, legal duty to do directly. The result is litigation instituted by the property owner rather than the condemnor.

The legislative authorization for public entities to expend public funds for the acquisition of open space is not an isolated provision of law. The State and Federal Constitutions and the Government Code are consistent in the explicit requirement that the acquisition of open space, while a valid and even important function of government, necessarily requires just

compensation to the landowner. The Legislature has decreed that every city and county must have in effect a local open space plan. It has further required the adoption of an open space zoning ordinance consistent with such plan. Gov. Code §§ 65563 and 65910. Again, however, the Legislature has clearly provided that the cost of this public benefit is to be borne not by the private property owner, but by the public at large through the governmental entity:

The legislature hereby finds and declares that this Article is not intended, and shall not be construed, as authorizing the city or the County to exercise its power to adopt, amend or repeal an open space zoning ordinance in a manner which will TAKE OR DAMAGE PRIVATE PROPERTY FOR PUBLIC USE WITHOUT THE PAYMENT OF JUST COMPENSATION THEREFOR. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or of the United States. Gov. C. §65912. (Emphasis added.)

The cases reveal the same underlying attitude:

"The tendency under our system is too often to sacrifice the individual to the community; and it seems very difficult in reason to show why the State should

not pay for property which it destroys or impairs the value, as well as for what it physically takes. ...'

Bacich v. Board of Control (1943) 23 C2d 343, 351.

The Fifth Amendment's (of the Federal Constitution) guarantees that the private property shall not be taken for public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

Armstrong v. United States (1960) 364 U.S. 40, 49.

County is well aware of the requirements of just compensation where property is taken or damaged by a public entity. In a report prepared for the County dated July 28, 1970, and entitled "Open Space, and How to Keep It", it is stated as follows:

One of the basic, fundamental precepts of American law is the right of a landowner to the use of his land or to be adequately compensated for the loss if a public agency takes the land for public use. This right must be kept in mind in assessing alternatives for acquiring or preserving open space just as it must be kept in mind in the

acquisition of land for any other purpose by a public agency.

Thus, a public agency such as the County of Santa Cruz must compensate the owner of open space land which the agency desires to acquire for the benefit of the public ... (Report to the Board of Supervisors, dated July 28, 1970, p. 3, third paragraph from the top, CT 2378)

The Santa Cruz County Grand Jury Report for Fiscal July 1, 1972 through June 30, 1973, commenting on a pervading County Planning attitude pointed out: "... no matter how well intended or carefully devised such planning may be, experience has shown that, for some property owners the results cannot help but be punitive or even tantamount to confiscation ..." It is further recommended that property owners should be fairly and duly compensated. Grand Jury Report, Exhibit 24, CT 2317-2319.

The landowner has submitted various land use proposals for the subject property but to no avail. RT

1 216-218 and 223, II-8.²

County has successfully acquired the subject 70 acres. Yet, rather than compensate the landowner through an appropriate mode, the County has utilized, inter alia, a series of actions and inactions over a number of years in a heretofore unsuccessful attempt to obfuscate Seascope's rights under the United States Constitution.

B. The United States Constitution requires the Award of Monetary Damages as set forth in the Trial Court Judgment.

The Fifth and Fourteenth Amendments of the United States Constitution vest in Seascope the right to due process of law, just compensation when private property is taken for public use, and equal protection

fn.2. Moreover, the United States Supreme Court has pointed out that exhaustion of any so-called administrative remedies is not a prerequisite. Patsy v. Board of Regents of the State of Florida (1982) U.S., 73 L.Ed.2d 172, 102 S.Ct. 2557

of the laws. These rights are personal and fundamental to Seascope and protected by not only the Federal Constitution but also by Title 42 U.S.C § 1983, et seq., the Federal Civil Rights Act. Lynch v. Household Finance Corporation (1972) 405 U.S. 538, 552.

The highest court of the land has indicated that the concept of "property" in the Fifth Amendment is designed to protect the full range of interests that citizens possess. Property rights "denote the group of rights inherent in the citizen's relationship to the physical thing, such as the right to possess, use and dispose of it." United States v. General Motors Corp. (1945) 323 U.S. 373, 377. The United States Supreme Court has further stressed:

[We] have recognized that action in the form of regulation can so diminish the value of property as to constitute a taking.

United States v. Central Eureka Mining Co. (1958) 357 U.S. 155, 168.

The individual landowner should not in fairness and justice bear the burden of a public benefit that should

be borne by the public as a whole. Armstrong v. United States (1960) 364 U.S. 40; . United States v. Willow River Power Co. (1945) 324 U.S. 499, 502; and Pennsylvania Coal Co. v. Mahon (1922) 260 U.S. 393.

In San Diego Gas and Electric co v. City of San Diego (1981) 450 U.S. 626, 654-57, 101 S.Ct. 1287, 1308 and 1305, Justice Brennan, in dissent, summarizes the viewpoint of a majority³ of the United States Supreme Court:

The applicability of express constitutional guarantees is not a matter to be determined on the basis of policy judgments made by the legislative, executive, or judicial branches. Nor can the vindication of these rights depend on the expense on doing so. (Citations).

....

The language of the FIFTH AMENDMENT prohibits the 'taking' of private property for 'public use' without payment of 'just compensation' as soon as private property has been taken,

fn.3. See Justice Rehnquist's concurring opinion which agrees with the views of the four dissenting Justices on the substantive taking question (at 129).

whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the owner has ALREADY suffered a constitutional violation, and "the self-executing character of the constitutional provision with respect to compensation" (Citations) is triggered. This court has consistently recognized that the just compensation requirement in the Fifth Amendment is not precatory: once there is a "taking", compensation MUST be awarded. (Emphasis in original opinion).

The writer of the majority opinion in Agins v. City of Tiburon (1980) 446 U.S. 907, was Justice Powell, and he joined with Justice Brennan in expressing the views of the majority of the court in this dissenting opinion.

The importance and availability of the damage remedy for violations of Federal Constitutional rights was also recently reaffirmed in Owens v. City of Independence (1980) 445 U.S. 622, 651, 100 S.Ct. 1398, 1415-17, where the court emphatically held that damages are available and should be awarded when Constitutional rights are violated, regardless of the purported good faith of the governmental action.

By its own action, County has chosen a monetary judgment. County is now bound by its own choice.

C. The Comments in Agins v. Tiburon Prohibiting a Damage Remedy must yield to the United States Constitution.

The comments of the California Supreme Court in Agins v. Tiburon (1979) 24 C3d 266 concerning a damage award are dicta. See CA 7. Second, all levels of the State court judiciary are duty-bound to follow the United States Constitution. California Constitution, Article III, Section 1. The Fifth and Fourteenth Amendments to the United States Constitution require the payment of "just compensation", including damages to the landowner. This is the law of this Country. See Burrows v. City of Keene (1981) 432 A.2d 15, 20; In Re Aircrash in Bali Indonesia (1982, 9th Cir.) 684 F.2d 1301, 1311, fn.7. The State courts must yield to the Federal constitutional requirements including "just compensation". City of Oakland v. Oakland Raiders Friends (1982) 32 C3d 60, 67. Third, the rights of this

landowner are basic civil rights that have long been protected by both the United States Constitution and the Federal Civil Rights Act, 42 U.S.C. §1983, Lynch v. Household Finance Corp. (1972), *supra*. In this regard, the United States Supreme Court clearly affirmed that a "damage remedy against the offending party (especially when it is a public agency) is a vital component of any scheme for vindicating charged constitutional rights ..." Owens v. City of Independence (1980) 445 U.S. 622, 651, 100 S.Ct. 1398, 1415-1417. (Parenthesis added.)

Although briefed by Seascope, the decision of the Court of Appeal did not consider and does not mention the Federal Civil Rights Act, 42 U.S.C. §1983, which provides a damage remedy. Seascope is entitled to monetary damages as provided in the lower court Judgment. The County refused to exercise the option to provide additional densities as set forth in the Trial Court Judgment. Said Judgment specifically provided that, if the County did not exercise the alternate as

therein specified, the County must pay monetary damages as set forth therein.⁴ CT 2012, L. 28- 2013, L. 6.

D. Seascape is entitled to Recover Costs, including Experts' Fees and Attorney's Fees, against the County of Santa Cruz.

The Trial Court Judgment, provided, inter alia, the County with the option to allow higher densities. Yet, the County chose not to exercise that option and, according to the lower court Judgment, monetary damages were awarded. CT 2010-2012. The Trial Court Judgment further provided that, regardless of

fn.4. "Just compensation" mandated by the United States Constitution requires, inter alia, certainty, a full equivalent, and monetary compensation. Fifth and Fourteenth Amendments of the United States Constitution. Neither higher densities nor, for that matter, invalidation are "just compensation". Further neither can be used to avoid a taking. The State courts must yield to the federal constitutional requirements including "just compensation". City of Oakland v. Oakland Raiders, supra. Moreover, in light of this factual situation involving a series of actions and inactions by the County over a lengthy period of time, invalidation is obviously no remedy at all.

whether monetary damages or higher densities were chosen by the County, the landowner was awarded costs of suit, including experts' fees and attorney's fees. CT 2012, L. 11-14. The Court of Appeal ordered, inter alia, that the County grant Seascope higher densities, but directed that each party bear its own costs. CA 20 and 31.

Costs of suit including attorney's fees on both the trial court and appellate court levels and experts' fees should be awarded to Seascope. Sections 1021.5 and 1036 of the Code of Civil Procedure, and each section; 42 U.S.C. §1988. Further, the Attorney's Fees Award Act evidences a clear legislative intent that costs of suit including experts' fees and attorney's fees must be awarded Seascope. 42 U.S.C. §1988; Bonnes v. Long (1979) 599 F.2d 1316, 1319; Johnson v. State of Mississippi (1979) 606 F.2d 635, 637-639; Kimbrough v. Arkansas Activities Assoc. (1978) 574 F.2d 423.

IV

OTHER ERRORS

Seascope respectfully notes several other errors in the decision of the Court of Appeal. Seascope alleged and proved and the trial court found and determined after an extended court trial that, as a result of a series of actions and inactions of the County over a lengthy period of time, the County of Santa Cruz violated the Constitutional rights of Seascope and a taking had occurred. e.g., see First Amended Complaint, CT 71 and 76-77; Findings of Fact No. 36 and 37, CT 1989; Conclusions of Law No. 1, CT 1999. The reviewing court may not substitute its deductions for those of the Trial Court, particularly here in view of the court trial of many days. Campbell v. Southern Pacific (1978) 22 C3d 51, 60. Nevertheless, the Court of Appeal decision categorizes this matter as a "mere" rezoning case. See CA pages 3 and 19. Such categorization is incorrect and constitutes error.

In addition to the above, the Court of Appeal, incorrectly, asserts that there was no taking based, specifically, on the erroneous premise that County ordinances permitted the granting of compensating higher densities to Seascope. CA 19-2. First, even assuming arguendo that such ordinances did permit the granting of compensating densities to Seascope, which they did not, the Trial Court, after considering extensive oral documentary evidence during many days of trial, clearly found and determined that the County had blatantly demonstrated a continuing and absolute unwillingness to provide Seascope with any compensating densities, whatsoever, as evidenced by the County's actions and inactions over a period of time. E.g., Findings of Fact Nos. 22, 23, 25 and 31; CT 1987-1988. Further highlighting the County's obstensity is the refusal by the County to exercise its option to accept the alternate judgment providing for higher densities rather than a money judgment. Not only is the trial court Judgment presumed to be correct, but

any conflict must be resolved in favor of the same. Moreover, a "reviewing court is without power to substitute its deduction for those of the Trial Court". Campbell v. Southern Pacific (1978) supra., 60.

Second, the Trial Court having considered the County ordinances and conduct in the crucible of an actual facts situation, properly made its determination. This must be followed in the appellate review process. Campbell v. Southern Pacific (1978) supra.

Third, even viewing the naked County ordinances disassociated from this factual situation, the County created an impediment to the provision of higher densities to the landowner. For example, the County specifically required in its own ordinance that, in order to grant a PUD in a UBS zone district, the standards and densities must be consistent" with the Aptos Plan. Section 13.04.306c of the County Ordinances; Exhibit CC, CT 3042. The earlier 1967 Aptos Area Plan placing the subject property in permanent open space for the benefit of the public called for the

creation of the new PLANNED COMMUNITY DISTRICT as a mechanism to provide compensating higher densities. Yet, no such Planned Community District was ever formed by the County. RT I, 25-26, L. 6; RT XV, 168, L. 16- 169, L. 9. Confirming that which the County had earlier effectuated, the 1974 Aptos Area Plan not only designated the subject 70 acres as "park-playground" (the same designation used for State owned parks), but also made no provision whatsoever for compensating higher densities. RT I, 216; RT VII, 73, L. 21-23. This merely fortifies the earlier adopted County Parks and Open Space (PROS) Plan recommending for "immediate action" the public acquisition of the subject Seascape beach. CT 2316; CT 2307 and RT I 167 and 172. Furthermore, shortly before placing the UBS-50 (Unclassified-minimum Building Site per unit = 50 acres) zone on the subject property, the County, in a discussion involving the Board of Supervisors and the Santa Cruz Planning Director (Monasch), confirmed the elimination of any potential for

compensating higher densities with respect to the subject 70 acres, even through the PUD process. CT 2333; RT I 216-218 and 223; RT IV 94, L. 2-23.

The County rejected Seascope's earlier residential land application on the subject property, Tract 553, Unit no. 7; the County, through the rezoning process, eliminated Seascope's submitted land use proposals involving the subject property in the Goetz Plan and Eckbo EIR; the County rejected its own Planning Staff and Planning Commission's recommendation of 200 to 250 compensating higher densities (in return for placing the subject 70 acres into permanent open space); the County rejected the concept of compensating higher densities and Seascope has never received any compensating higher densities. RT I, 218-223; II 179, L. 13-19; II 188, L. 15-21; II 143, L. 21-144, L. 12; RT IV 99, L. 4-100, L. 1; VII 111, L. 4-8; RT XV 152, L. 4-6; RT XV 167 L. 3-5; RT I 139, L. 9-143, L. 22; Exhibit 1a, CT 2264; CT 2293; RT II 18, L. 13-20; RT VIII 107, L. 1-111, L. 11. The subject property, as a

result of the conduct of the County over a number of years, has no value, whatsoever, to the private landowner; it is not saleable; it does not in any add value to any of Seascope's other properties; and there is no economically viable use left in the subject property. RT I 182-184; RT I 218-219, L. 6; RT I 223; RT IV 99 and 125; RT II 245, L. 4-25; RT II 249, L. 19-23; RT XV 93, L. 16- 94, L. 21; RT XV 152, L. 16-23; RT IV 9, L. 12- 10, L. 4; RT IV 107, L. 13-19; CT 1987 and 1999.

As stated by County Supervisor Forbus, concerning the plight of Seascope and the utter devastation visited upon it by the County conduct:

.... Just a couple of more sentences here, I think that you know, a pendulum swings back and forth, it never stops in the middle, it is never on one side or the other, and it has swung so completely that the only place that a property owner or a man who owns anything has a place to get redress now is in the courts.

Minutes of the Board of Supervisors, CT
2333, last paragraph; CT 2292.

Respectfully submitted,

January 31, 1983.

ADAMS, LEVIN, KEHOE,
BOSSO, SACHS & BATES
A Professional Corporation

/s/ DENNIS J. KEHOE,
DENNIS J. KEHOE,
Attorney for APTOS SEASCAPE
CORPORATION

APPENDIX G

**CLERK'S OFFICE, SUPREME COURT
4250 State Building**

San Francisco, California 94102

APR 20 1983

I have this day filed Order HEARING DENIED
/s/ Richardson, Kaus, Brouard, JJ OF THE OPINION
THAT THE PETITION SHOULD BE GRANTED.

In re: 1 Civil No. 46963

Aptos Seascape Corp.

vs.

County of Santa Cruz et al.

Respectfully,

Clerk

APPENDIX H

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SANTA CRUZ

5 0 1 4 2
CASE NUMBER

APTOS SEASCAPE CORPORATION, etc.

Plaintiff(s)/ Cross-Defendant,
Respondent-Cross-Appellant,

vs.

THE COUNTY OF SANTA CRUZ, et al.,

Defendant(s)/ Cross-complainants,
Appellants-Cross-Respondents.

NOTICE OF ENTRY OF REMITTITUR

To the above named parties and to their attorneys
of record:

You are hereby notified that a remittitur has been
issued in the above entitled matter pursuant to Rule 25
of the California Rules of Court and the remittitur
was entered on 4-26-83.

RICHARD W. BEDAL, COUNTY CLERK

BY /s/ Kenni Lopes
Deputy Clerk

CERTIFICATE OF MAILING

I, RICHARD W. BEDAL, County Clerk and Clerk of the Superior Court of the State of California for the County of Santa Cruz, and not a party to the within action, hereby certify; that on 5-2-83, I served notice of entry of Remittitur on the parties in the within action, by depositing true copies thereof, enclosed in sealed envelopes with postage prepaid in the United States Post Office mail box at Santa Cruz, California addressed as follows:

Dennis J. Kehoe
Adams, Levin, Kehoe, Bosso,
Sachs & Bates
323 Church Street
Santa Cruz, CA 95060

Clair A. Carlson
County Counsel
701 Ocean Street
Santa Cruz, CA 95060

T. Roy Gorman
Chief Counsel
California Coastal Commission
631 Howard Street
San Francisco, CA 94105

DATED: 5-2-83

RICHARD W. BEDAL, COUNTY CLERK

By _____
Deputy Clerk

NOTICE OF ENTRY OF REMITTITUR

APPENDIX I

Dennis J. Kehoe
Adams, Levin, Kehoe, Bosso, Sachs & Bates
A Professional Corporation
323 Church Street
Santa Cruz, CA 95060
Telephone 426-8484

Attorneys for APTOS SEASCAPE CORPORATION.

**IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE**

Case No. A012759

Old No. 1 Civ. 46963

(Santa Cruz County

Superior Court No. 50142)

APTOS SEASCAPE CORPORATION,

Plaintiff, Cross-Defendant
Respondent and Cross-Appellant,

v

THE COUNTY OF SANTA CRUZ, et al.,

Defendants, Cross-Complainants
and Appellants

FILED

JUL 12 1983

Court of Appeal - First App. Dist.

By CLFFOD C. PORTER, Clerk

**NOTICE OF APPEAL TO THE SUPREME COURT
OF THE UNITED STATES**

NOTICE IS HEREBY GIVEN, that APTOS SEASCAPE CORPORATION, Appellant, (Plaintiff, Cross-Defendant, Respondent and Cross-Appellant below) hereby appeals to the United States Supreme Court from those portions, only, of the final Judgment herein reversing the trial court Judgment awarding Aptos Seascap Corporation damages, costs, and fees in inverse condemnation and affirming, with modification, the trial court Judgment dismissing Aptos Seascap Corporation's Second Cause of Action for, inter alia, declaratory relief, damages and other relief; and each of the foregoing portions thereof. (No appeal is taken from the other portion of the Judgment herein affirming the trial court Judgment in favor of Aptos Seascap Corporation on the Cross-Complaint of the County of Santa Cruz.)

Said portions of the Judgment herein and the entire Judgment, itself, herein did not become final until after Petitions for Rehearing were denied and

Petitions for Hearing by the California Supreme Court were denied on April 20, 1983 and, thereafter, the Remittitur by the Clerk of the Court of Appeal was entered on April 25, 1983. The decision of this Court of Appeal was initially entered (filed) on December 23, 1982.

This Appeal is taken pursuant to 28 United States Codes Section 1257(2).

DATED: July 12, 1983.

APTOS SEASCAPE CORPORATION

**BY: ADAMS, LEVIN, KEHOE
BOSSO, SACHS & BATES
A Professional Corporation**

By: /s/ Dennis J. Kehoe
DENNIS J. KEHOE
Attorneys of Record for
APTOS SEASCAPE CORPORATION

**323 Church Street
Santa Cruz, CA 95060
Telephone: (408) 426-8484**

CERTIFICATE OF SERVICE BY MAIL

I, DENNIS J. KEHOE, declare:

That I am a citizen of the United States and resident or employed in Santa Cruz County, California; that my business address is 323 Church Street, Santa Cruz, California 95060; that I am over the age of eighteen years, and am not a party to the above-entitled action;

That I am the attorney of record for Aptos Seascape Corporation, and I am a member of the Bar of the United States Supreme Court; that on July 12, 1983, I deposited in the United States post office mail box in the above-entitled action, in an envelope bearing the requisite first class postage, a copy of:

Notice of Appeal to the Supreme Court of the United States on the County of Santa Cruz and California Coastal Commission addressed to:

Peter Townsend
P.O. Box 7420
San Francisco, CA 94120

T. Roy Gorman, Chief Counsel
California Coastal Commission
631 Howard Street
San Francisco, CA 94150

Honorable Roland K. Hall
Judge of the Superior Court
701 Ocean Street
Santa Cruz, CA 95060

County Counsel
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060

Attorney General of the
State of California
Attn: Linus Masourelis
Richard Jacobs
6000 State Building
San Francisco, CA 94102

Santa Cruz County Clerk
701 Ocean Street
Santa Cruz, CA 95060

at their last known address, at which place there is
service by United States mail. This service is pursuant
to Rule 28.

This Certificate is executed on July 12, 1983 at
Santa Cruz, California.

I certify under penalty of perjury that the forego-
ing is true and correct.

/s/ Dennis J. Kehoe
DENNIS J. KEHOE

APPENDIX J

PERTINENT COUNTY ORDINANCES

13.04.306 Planned Unit Development Site Area - Development Standards - Density.

- a. Development Standards. Development standards for site area and dimensions, site coverage, yard spaces, heights of structure, distances between structures, off-street parking and off-street loading facilities and landscaped areas shall, in the aggregate, be at least equivalent to the standards prescribed by the regulations for the district in which the planned unit development is located.
- b. Density. The average number of dwelling units per developable acre shall not exceed the maximum number of dwelling units prescribed by the site regulations or the site area per dwelling unit regulation for the district in which the planned unit development is located subject, however, to the exception that the average number of dwelling units per developable acre may exceed the

maximum number of dwelling units prescribed for a district by not more than 10% in a planned unit development on a site of ten acres or more.

- c. Exception. The development standards and density requirements of subsections (a) and (b) above shall not apply in the "U-BS" Districts wherein the standards and density must be consistent with the applicable General Plan as determined by the Planning Commission, or Board, as the case may be. (Ord. 1714, Sec. 2, May 9, 1972)

13.04.323 Action by the Zoning Administrator.

The Zoning Administrator may grant an application for a use permit as applied for, or in modified form, if on the basis of the application and the evidence submitted, the Zoning Administrator makes the following findings:

- a. That the proposed location of the conditional use is in accordance with the objective of the zoning ordinance and the purposes of the district in which the site is located.

- b. That the establishment, maintenance or operation of the use or building will not, under the circumstances of the particular case, be detrimental to the health, safety, peace, morals, comfort and general welfare of persons residing or working in the neighborhood of the proposed use or be detrimental or injurious to property and improvements in the neighborhood or to the general welfare of the County.
- c. In the event that the proposed use of the property is in an Unclassified Zone, the Zoning Administrator shall make the additional finding that the proposed use is in keeping or consistent with the objectives of the Zoning Ordinance and those of the General Plan of the Planning area, if any, in which the proposed use is to be established, and with the objectives of the Countywide General Plan. (Ord. 758, Sec. 2 part, February 19, 1962; Ord. 1704, Sec. 20, April 25, 1972)

13.04.250.15 Planned Development Site Area -
Development Standards - Density - Housing Types.

- a. Development Standards. Development standards for site area and dimensions, site coverage, yard spaces, heights of structure, distances between structures, off-street parking and offstreet loading facilities and landscaped areas shall in the aggregate be at least equivalent to the standards prescribed by the regulations for the district in which the planned development is located.
- b. Density. The average dwelling unit per net acre shall not exceed the maximum population density prescribed by the site area regulations.
- c. Mixing of Housing Type. A planned development may include a combination of different dwelling types which complement each other and harmonize with existing and proposed land uses in the vicinity. (Ord. 1578, Sec. 27, Feb. 23, 1971; Ord. 1704, Sec. 11, Apr. 25, 1972; Ord. 1746, Sec. 3, July 18, 1972)

ORDINANCE NO. 1800

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE COUNTY OF SANTA CRUZ, CHANGING CERTAIN PROPERTY FROM ONE ZONING DISTRICT TO ANOTHER IN VICINITY OF:

(Seascape-La Selva Coastal Area (Bounded on north by Hidden Beach and south by Manresa State Beach))

The Board of Supervisors of the County of Santa Cruz, State of California, does ordain as follows:

1. Chapter 13.04 of the Santa Cruz County Code, State of California, being the Zoning Ordinance of the County of Santa Cruz, is hereby amended by amending Sectional District Map/s Nos. 13.04.100-20, 28, 29 and 33, T11S, R1W - Map Nos. 416, 433, 432 & 445, respectively.

to change that property shown on the attached diagram FROM THE:

Various interim U-BS, Residential and Agricultural

Districts TO THE;

R-1-6 PD, and various U-BS, Districts as shown on Exhibits A & B in the Planning Department

2. This ordinance shall take effect 30 days from and after the date of its adoption.

PASSED AND ADOPTED this 5th day of December 1972, by the following vote:

AYES: SUPERVISORS MELLO, SANSON, HARRY

NOES: SUPERVISORS FORBUS, CRESS

ABSENT: SUPERVISORS NONE

/s/ Philip Harry
Chairman of said Board

ATTEST: /s/ Tom Kelly
Clerk of said Board

Distribution: County Counsel
Planning Department
Santa Cruz Sentinel

Approved as to form: /s/ C A Carlson
Clair Carlson, Chief
Deputy County Counsel

REF: Planning Commission Recommendation 90-72
File No

PUBLIC NOTICE

PUBLIC NOTICE

**AMENDED
ZONING PLAN,
SECTIONAL DIST MAP
1304100, EST II S, R1E**

MAPS 410,432,433,440

SPONSOR 1000

0 200 400 600 800

